

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules
Governing Air Emissions Permits, Minnesota Rules
Chapters 7005, 7007, Greenhouse Gas Permitting Rules
(“Tailoring” or GHG Rules) and 7001,

RULES HEARING
OAH DOCKET NO. 16-2200-22910-1

The above-entitled matter came on for hearing
before Manuel Cervantes, Administrative Law Judge,
taken before Angela D. Sauro, RPR, a Notary Public in
and for the County of Hennepin, State of Minnesota,
taken on the 30th day of August, 2012, at the
Minnesota Pollution Control Agency, Boardroom,
520 Lafayette Road, St. Paul, Minnesota, commencing at
approximately 2:00 p.m.

KIRBY A. KENNEDY & ASSOCIATES
(952) 922-1955

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(952) 922-1955

APPEARANCES

MANUEL J. CERVANTES, ADMINISTRATIVE LAW
JUDGE, OFFICE OF ADMINISTRATIVE HEARINGS, 600 North
Robert Street, Post Office Box 64620, St. Paul,
Minnesota 55164-0620, appeared as the Judge.

ANDREW J. TOURVILLE, JR., ASSISTANT ATTORNEY
GENERAL, Bremer Tower, Suite 900, 445 Minnesota
Street, St. Paul, Minnesota 55101-2127, appeared for
and on behalf of the Minnesota Pollution Control
Agency.

PANEL MEMBERS

BARBARA JEAN CONTI, Air Quality Technical
Staff
NATHAN COOLEY, Rules Coordinator
FRANK KOHLASCH, Environmental Analysis &
Outreach Section Manager

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THE JUDGE: Good afternoon. My name

is Judge Manuel Cervantes, I am an Administrative Law
Judge with the Office of Administrative Hearings. The
Office is independent of the Minnesota Pollution
Control Agency that is proposing to adopt rules today
and of any individuals or groups that may be
participating in this hearing. The role of this
office is to provide hearings like this that are
required by law in a way that is fair to all the
parties who are participants.

Among the other directions from the
Legislature, specifically Minnesota Statutes 14.14 and
14.15, rulemaking hearings are to be conducted so that
members of the public may be treated fairly and
impartially. I am here as part of a larger set of
regulatory controls to ensure this procedural fairness
is maintained.

It is approximately 2:15 on August 30, 2012,
and we have convened in the Boardroom of the offices
of the Pollution Control Agency in St. Paul.

We are here in the matter of proposed rules
of the Minnesota Pollution Control Agency governing
permits for greenhouse gas emissions, emissions from
stationary spark emission engines, and clarification
of who must obtain air permits under Minnesota Rules

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1 Chapters 7005, 7007 and 7011.

2 There is a handout on the table entitled the
3 State of Minnesota, Office of Administrative Hearings
4 Rule Hearing Procedures. If you don't have a copy,
5 please take a moment to retrieve one from the table.
6 It describes the procedures set up by the Legislature
7 for hearings like this. Although I will touch upon
8 the highlights of the procedures, more detailed
9 information is included in the handout.

10 This hearing is part of the process by which
11 agency rules are adopted under the Minnesota
12 Administrative Procedure Act. The purpose of this
13 hearing is to develop and receive information on three
14 key issues under the Act. Namely, whether the
15 Minnesota Pollution Control Agency, one, has the legal
16 authority to adopt the proposed rules; two, has
17 fulfilled all the relevant legal and procedural
18 requirements in order to promulgate rules; and, three,
19 has demonstrated that among the possible alternatives
20 for rulemaking that were available to the Agency, the
21 rules that the Agency has proposed are needed and
22 reasonable.

23 While I am happy to give anyone who will
24 share comments today the leeway in developing the
25 context for their presentations and arguments, I will

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1 allotted for questions and statements from the public.

2 In order to make sure that we have an
3 accurate record of the number of people attending this
4 hearing, everyone is requested to sign the hearing
5 register located at the registration table. If you
6 wish to speak or submit a written statement today, you
7 must sign the register. If you wish to speak, please
8 indicate that on the hearing register.

9 When you are called upon to speak, please
10 come up to this area here where the microphone has
11 been set up so that we can be assured that your
12 testimony is recorded. When you begin speaking please
13 state your full name and spell it, and then also give
14 us your address, and identify any group or interest
15 group that you represent.

16 A rule hearing like this is similar to a
17 local board meeting or a legislative hearing. You
18 will have the opportunity to talk and to ask questions
19 of other participants. It is not a court trial. Any
20 speaker may ask questions of the Agency and may also
21 be questioned by the Agency, the Administrative Law
22 Judge or other persons present at the hearing.

23 Because this is not a court hearing, you do
24 not need to make points you want to make by asking
25 questions. You can go directly to the point. You can

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1 simply say that it will be most helpful to me and the
2 best use of our time if both the Agency staff and
3 members of the public would focus on the three key
4 issues that I will need to report upon, namely whether
5 the Minnesota Pollution Control Agency has the legal
6 authority to adopt the proposed rules, has fulfilled
7 all the relevant legal and procedural requirements in
8 order to promulgate the rules, and has demonstrated
9 that the rules that the Board has proposed are needed
10 and reasonable.

11 The agenda for today is to complete my
12 preliminary remarks regarding the procedure of the
13 hearing, introduce the Agency staff that is here from
14 the Minnesota Pollution Control Agency, and next the
15 Agency will submit its exhibits that will be included
16 in the hearing record. I have asked the Agency
17 representative to summarize the exhibits so that
18 everyone has an idea of what will be going into the
19 record. You may look at the exhibits during the
20 break, but please leave them there at the table.

21 After that a representative of the Agency
22 will make a brief oral presentation about the rules
23 and the reasons for them. There will also be other
24 staff available to answer questions.

25 Finally, most of the hearing time has been

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1 state what your own views are. It is also helpful
2 that if you have specific points to address relative
3 to a section of the rule, that you identify those
4 sections. The record we make today may be reviewed by
5 others later. We want to make sure that your point is
6 equally clear to them.

7 This hearing is being recorded by a court
8 reporter and will be transcribed. It is very
9 important that we obtain an accurate record of this
10 hearing. I would therefore ask all speakers to
11 remember the following: It is important that you
12 speak clearly and slowly and loud enough so that we
13 can hear you. All statements must be spoken. A nod
14 of the head yes or no obviously cannot be recorded.
15 Please spell out proper names or technical terms the
16 first time they are used. I ask that only one person
17 speak at a time.

18 If you have a written copy of your remarks
19 that you can leave with us as an exhibit, please do
20 so.

21 You may also submit your comments in writing
22 after the hearing. Comments should be submitted to my
23 office at the address indicated on the back of the
24 handout. After the close of the hearing you will have
25 20 days or until Wednesday, September 19, 2012 to make

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1 your submission, and then you will have a five-workday
2 rebuttal period to comment on all previously submitted
3 comments. That period closes at the close of business
4 on Wednesday, September 26, 2012.

5 The second period is not an opportunity to
6 submit your initial comments or evidence. Minnesota
7 law states additional evidence may not be submitted
8 during the five-day rebuttal period. Your initial
9 comments must be done by the close of the initial
10 comment period, which will close on Wednesday,
11 September 19th. The five-day rebuttal period is an
12 opportunity for you to review and respond to the
13 comments submitted to the Agency or others during the
14 first comment period.

15 After the Wednesday, September 26, 2012
16 deadline passes, I will prepare a report, and that
17 report will contain my decisions about whether or not
18 the Board has met the legal obligations I have
19 discussed earlier. If you want to obtain a copy of my
20 report, please put your name and address on one of the
21 envelopes at the sign-in table and we will see that
22 you get notice when the report is available. You will
23 be informed about how to obtain a copy.

24 The handout goes into those details about the
25 hearing process that occurs after my report is issues.

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1 this on the microphone, I was going to have them
2 introduce themselves, but I will do my best to
3 introduce them. I should get my list here of folks,
4 of which I lost. The person who will make the
5 presentation for the MPCA today is Ms. Barbara Jean
6 Conti, and she is an air policy technical staff. If I
7 get positions wrong, if you would correct me I would
8 appreciate it.

9 The next person on the list that I have is
10 Kelsey Suddard, and Ms. Suddard is an air quality
11 permits engineer. Nathan Cooley has already spoken.
12 Nathan is the rule coordinator for this particular
13 proceeding. David Richfield is in the back, and David
14 is the Agency rules supervisor. Carolina Schutt over
15 here, and she is the air quality permits and air
16 quality permits supervisor. Frank Kohlasch, and Frank
17 is the environmental analysis and outcome section
18 manager.

19 Is there anyone else from MPCA here as part
20 of this rulemaking proceeding? Thank you.

21 THE JUDGE: Okay, thank you.

22 MR. TOURVILLE: So, Your Honor, I
23 have the documents that we usually refer to as the
24 jurisdictional documents, the various notices and
25 copies of the SONAR, rules and those things, and I

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1 If you are interested in those details, please pick up
2 a handout.

3 Are there any questions about the hearing
4 procedure before we get started? Mr. Cooley.

5 MR. COOLEY: Judge Cervantes, you
6 mentioned a handout, and I am not seeing it by the
7 sign-in sheet.

8 THE JUDGE: Okay, let me check.

9 MR. COOLEY: I will just pass one
10 around. If you want one, please take one.

11 THE JUDGE: Okay. Then with that, I
12 am going to call upon counsel for the Agency to make
13 his submission for the exhibits.

14 MR. TOURVILLE: Thank you, Your
15 Honor.

16 THE JUDGE: Mr. Tourville.

17 MR. TOURVILLE: My name is Andrew
18 Tourville, and I am an Assistant Attorney General
19 assigned to represent the -- I think I need to start
20 over. My name is Andrew Tourville, and I am an
21 Assistant Attorney General assigned to represent the
22 Minnesota Pollution Control Agency in this rule
23 proceeding.

24 I would like to introduce first the MPCA
25 staff and folks who are here. Because we need to get

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1 would like to go through them. If I give too much
2 detail and you don't need it, just let me know.

3 THE JUDGE: Okay. Will do.

4 MR. TOURVILLE: So I have, Your
5 Honor --

6 MR. MUELLER: Your Honor, if I may,
7 is it your intent to have the other participants in
8 the hearing also introduce themselves?

9 THE JUDGE: Not at this time. I
10 believe you came in a little bit later than most
11 folks, what I did is ask that folks that arrive here
12 to attend the hearing sign in at the register so we
13 know who folks are. If you want to make a public
14 presentation, you can do that, and I will call you in
15 turn.

16 MR. MUELLER: Second question, I
17 have a lot of questions for staff, at what time do you
18 want me to pose them?

19 THE JUDGE: As I indicated in my
20 initial remarks, that most of the hearing is going to
21 be around questions and comments from the public, and
22 so once we take care of some of the technical matters,
23 which the introduction of the documents that the
24 Agency is relying upon for their rulemaking process, I
25 will be turning it over for a short presentation to

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1 the Pollution Control Agency staff to give us an
2 overview of what is going on with the rules today and
3 what they are proposing, and then at that point we
4 will take the public comment and questions.

5 Then at the end of that period I will take
6 the information, and if folks want to submit
7 additional things in writing or comments, they can do
8 so, and there is some additional time to do that after
9 the hearing.

10 MR. MUELLER: Okay. Thank you, sir.

11 THE JUDGE: Mr. Tourville, you may
12 proceed.

13 MR. TOURVILLE: So there is a list,
14 the documents have been put into a binder, so they are
15 all in this binder. There is an index page in the
16 first page. The first exhibit, these have all been
17 marked, so this Exhibit 1 is the request for comments
18 that the Agency had published in the State Register
19 August 29, 2011. There is a copy of the notice itself
20 and a copy of a portion of the actual State Register
21 from which that copy is taken.

22 Exhibit 2 is the original copy of the
23 proposed rules with the certification by the Revisor's
24 Office by Cindy K. Maxwell, the Senior Assistant
25 Revisor, and these proposed rules are dated April 26th

1 adopt the rules without a public hearing unless 25 or
2 more persons requested a hearing, and the Notice of
3 Hearing if 25 or more requests for hearing are
4 received. That notice is dated July 3, 2012 signed by
5 Deputy Commissioner Beeman. There is also an
6 affidavit of publication of the dual notice that it
7 was published in the July 9, 2012 State Register, and
8 there is a complete copy of the State Register issue
9 for that publication.

10 The next exhibit is Exhibit 6, and Exhibit 6
11 is the Certificate of Mailing Notice to the rulemaking
12 mailing list, and that certificate is given by Nathan
13 Brooks Cooley. He is certifying that he mailed the
14 notice on July 9th to the persons who are on the list.
15 The list is 700 and -- well, there are two parts to
16 the list. This list is 1,338 -- 1,388 persons on the
17 list. These folks indicated, they self-subscribed to
18 the list, and this list is not only the people who
19 indicated they were interested in rules, but also
20 people who indicated they were interested in MPCA
21 rulemaking in general, and also people who indicated
22 that they were interested in air related issues.

23 Now, I want to tell you that this Certificate
24 of Mailing indicates that the mailing was done 32 days
25 before the end of the comment period, and the rules of

1 of 2011.

2 Exhibit 3 is the Statement of Need and
3 Reasonableness, the document we usually call the
4 SONAR. This is the original signed by deputy
5 Commissioner for the MPCA Michelle Beeman on July 3rd
6 of 2012. This copy also includes copies of the six
7 exhibits that are listed in the SONAR. Those are the
8 documents that Nathan Cooley mentioned at the start of
9 hearing. They are voluminous. They occupy about an
10 inch of paper in this book, and it's all two-sided, so
11 it's quite a bit of material, but it is all available
12 through the links that are listed at the end of the
13 SONAR.

14 The fourth exhibit -- I didn't even include
15 all of the ones, it's probably an inch and a quarter.

16 The fourth exhibit is the certificate of
17 mailing of the Statement of Need and Reasonableness to
18 the Legislative Reference Library. The certificate is
19 given by Nathan Brooks Cooley on July 6th of 2012. As
20 is preferred by the Legislative Reference Library, the
21 SONAR was electronically transmitted to the library.
22 There is also a copy of the transmittal letter that
23 was part of that e-mail submittal.

24 Exhibit 5 is a copy of the Notice of
25 Intent -- the dual notice, the Notice of Intent to

1 the Office of Administrative Hearings state that
2 notice should be mailed 33 days before the comment
3 period. Everybody these days is getting this notice
4 electronically, and the statute requires that everyone
5 have at least 30-days notice. Everyone did have
6 30-days notice, but it does not literally comply with
7 the Office of Administrative Hearings --

8 THE JUDGE: Okay.

9 MR. TOURVILLE: -- rule, and MPCA
10 believes that that will be a harmless error, but
11 requests that you make that determination.

12 THE JUDGE: All right. Just so
13 folks understand, we have a three-day rule for
14 mailing, and I suspect -- while I was not active in
15 the creation of the OAH rules, that that is probably
16 where that came from, but I just note that for the
17 record.

18 MR. TOURVILLE: Yes. I did a little
19 research into when that rule came about.

20 THE JUDGE: Why don't you further
21 elucidate us, when was that?

22 MR. TOURVILLE: I found -- this
23 probably goes back to the days when the Attorney
24 General's Office reviewed rules that did not require a
25 hearing, and I believe that that goes back to the

1 '80s. The current OAH rules come from I believe early
2 1996, and that is the first time when the OAH rules
3 mentioned the 33-day mailing period. Of course, those
4 were still the days when we were using the U.S. Postal
5 Service for contacting people. Now that the contacts
6 are in this case all by electronic means, folks
7 actually get the notice faster. So everyone did get
8 the notice when it was -- I mean it was in their inbox
9 32 days before the end of the comment period.

10 THE JUDGE: Thank you.

11 MR. TOURVILLE: Exhibit 7 is a
12 certificate of giving additional notice, and that
13 additional notice, let's see, was mailed -- was given
14 July 9th -- it was given several different times. It
15 was given on July 9, 2012 to the 702 people who
16 self-subscribed to what is called the Gov Delivery
17 mailing list. Those were the folks that indicated
18 that they were interested in the hearing, and this
19 notice is the one that tells people that there will be
20 a hearing, if I am reading this correctly.

21 The notice was also sent to the persons who
22 on April -- on August 14th after the comments came in
23 and MPCA determined that at least 25 hearing requests
24 had been received, the notice was sent to all of the
25 persons who commented or requested a hearing. I

1 Exhibit 9 is a letter -- is several things.
2 There is a letter from Nathan Cooley on June 25, 2012
3 to the Chief Administrative Law Judge requesting
4 approval of the proposed dual notice, the additional
5 notice plan and permission to omit the text of the
6 proposed rule from the dual notice based on cost
7 considerations. In response to that letter are two
8 letters. One is from Judge Cervantes approving the
9 additional notice plan and the dual notice, providing
10 that MPCA spells its name correctly.

11 The second letter is from the Chief
12 Administrative Law Judge which approves elimination of
13 the requirement to print the rule with the notice on
14 two conditions, and the conditions were that MPCA
15 include in its electronic version of the dual notice a
16 link directly to the proposed rules on the Agency's
17 website, and that was done; and, secondly, that MPCA
18 maintains that link or an automatic redirection of the
19 link to the proposed rules on the Agency's website for
20 30 days following publication of the Agency's final
21 notice of adoption of the rule after this process is
22 over.

23 Exhibit 10 is a certificate of sending the
24 dual notice and a Statement of Need and Reasonableness
25 to the legislators who are the chairs or ranking

1 believe that was 46 persons. Also the certificate
2 indicates that the notice was sent to legislative
3 assistants -- I might have misfiled Exhibit 7, if I
4 could have just a moment.

5 THE JUDGE: Sure, that is fine.

6 MR. COOLEY: This is a copy of the
7 revised.

8 MR. TOURVILLE: Thank you. So the
9 notice also certifies that on July 6th Nathan Brooks
10 Cooley sent the notice to legislative assistants for
11 various committees that have jurisdiction over this
12 matter, these rules, and then Nathan on August 24th
13 mailed the notice to ten persons who identified
14 themselves as interested parties during the good cause
15 exempt temporary rulemaking that preceded this
16 proceeding about more two years ago, less than two
17 years ago now. That is what is the purpose of today's
18 hearing is to replace these temporary rules with
19 permanent rules.

20 I may have to do a little page replacement
21 here.

22 THE JUDGE: That is fine.

23 MR. TOURVILLE: Exhibit 8 is the
24 comments that were received and the requests for
25 hearing that came in during the comment period.

1 minority members of the committees having jurisdiction
2 over legislative policy and budget that are pertinent
3 to these rules. The letter notified the legislators
4 that the dual notice, a SONAR and proposed rules were
5 on MPCA's public notices web page and provided them
6 with the electronic URL address to the web page.

7 And Exhibit 11 I believe is the final
8 exhibit, and that is the evidence of consultation with
9 the Minnesota Management & Budget, which is required
10 by statute, so MPCA submitted a request on May 25,
11 2012 to Katharine Barondeau, an executive budget
12 officer at Minnesota Management & Budget, regarding
13 consultation on the fiscal impact and fiscal benefits
14 of the proposed rules on local units of government;
15 and then there is a copy of the letter that was
16 received from Minnesota Management & Budget on
17 August 21st from Michelle Mitchell, the Executive
18 Budget Officer, and I quote from her letter, she
19 stated that MPCA "has adequately analyzed and
20 presented the potential costs and benefits of the
21 proposed rule changes, and that the changes will have
22 minimal fiscal impact on local units of government."

23 Although there are a few other tabs in this
24 binder, there is nothing at tabs 12 through 15, and
25 that concludes the jurisdictional documents. As I

1 say, I will change the pages here and get the right
 2 certificate in for Exhibit 7, but I would like to
 3 introduce those into evidence for this proceeding.
 4 THE JUDGE: Okay. Thank you. They
 5 are received. As I indicated in my remarks, I guess I
 6 am going to have it placed over here at the table so
 7 that folks who wish to look at any of those documents
 8 may do so.
 9 MR. TOURVILLE: And I have nothing
 10 further, Your Honor.
 11 THE JUDGE: Thank you.
 12 MR. TOURVILLE: Unless you have
 13 something else, I could introduce Ms. Conti, and she
 14 can make MPCA's presentation.
 15 THE JUDGE: Okay. Thank you. You
 16 may proceed.
 17 State your full name, Ms. Conti, for the
 18 record, and spell your last name for us.
 19 MS. CONTI: Judge Cervantes and
 20 interested parties, my name is Barbara Jean Conti. My
 21 last name is spelled C-O-N-T-I. I am the technical
 22 lead for MPCA's greenhouse gas permit rules.
 23 Today I will provide an overview of the
 24 MPCA's goals for the proposed rules, background
 25 information including the need for this rulemaking,

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1 I would like to provide some background
 2 information about the proposed rules. The Federal
 3 Clean Air Act regulates sources of air emissions. The
 4 Federal EPA implements Clean Air Act Requirements
 5 through its rules. Recent EPA rules added greenhouse
 6 gases to the pollutants covered by air permits. The
 7 new EPA rules are referred to as the Tailoring Rule
 8 because they tailor the existing major source permit
 9 threshold for greenhouse gases.
 10 EPA recognized that greenhouse gases, such as
 11 carbon dioxide from fuel burned in heating equipment,
 12 are emitted in a much higher volume than other
 13 pollutants. The EPA therefore adjusted the threshold
 14 for greenhouse gases that trigger major source
 15 permitting.
 16 These new Federal rules for permitting of
 17 greenhouse gases were promulgated by the EPA in
 18 May 2010, with compliance dates for permit holders of
 19 January 2, 2011 and July 1, 2011.
 20 Because of its having a federally approved
 21 permit program, the MPCA needed to amend Minnesota
 22 rules to implement these Federal regulations. The
 23 MPCA must include greenhouse gases in its air quality
 24 permits for consistency with the national air permit
 25 rules and to retain EPA approval of our air permit

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1 and the main elements of the proposed rules.
 2 The MPCA's goals for this rulemaking are as
 3 follows: The State of Minnesota administers its air
 4 operating permit program under the approval of the
 5 Federal Environmental Protection Agency or EPA. The
 6 EPA passed new permit rules for greenhouse gases. By
 7 adopting EPA's requirements in this proposed
 8 rulemaking, the MPCA will maintain its authority to
 9 administer its air operating permit program. If
 10 Minnesota fails to adopt the proposed permanent rules,
 11 the EPA could disapprove Minnesota's air operating
 12 permit program.
 13 That would result in the EPA taking on
 14 Minnesota's permitting of greenhouse gases and
 15 applying Federal rules equivalent to those proposed by
 16 the MPCA. The EPA's involvement would result in
 17 additional delays and related costs for permit
 18 holders.
 19 Additionally, by adopting these rules the
 20 MPCA keeps its air permit program consistent with the
 21 Federal rules and other states.
 22 The MPCA proposes to adopt several
 23 housekeeping changes to other portions of the permit
 24 rules since the rules are already open to address
 25 permitting of greenhouse gases.

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1 program.
 2 Because of the short timeframe allowed in
 3 EPA's rules for permit holders to comply with the new
 4 requirements, there was not enough time for the MPCA
 5 to undertake rulemaking using the standard
 6 administrative process. Therefore, the MPCA proposed
 7 rules in 2010 under the exempt rulemaking process in
 8 Minnesota Statutes Section 14.388. The Good Cause
 9 Exemption allows agencies to use a compressed
 10 rulemaking process when necessary to comply with the
 11 requirements in Federal law. Rules enacted under that
 12 operation expire after two years. The MPCA's
 13 temporary rules were effective on January 24, 2011 and
 14 will expire on January 24, 2013.
 15 Although the temporary rules will expire, the
 16 need for these rules remains. Now the MPCA has
 17 proposed making those rules permanent using the
 18 standard rulemaking processes.
 19 The proposed permanent rules incorporate the
 20 EPA's permit applicability threshold for major sources
 21 of greenhouse glasses, which is 100,000 tons per year
 22 of carbon dioxide equivalent. This higher threshold
 23 is proposed because greenhouse gases, while not
 24 previously regulated by EPA as emissions of concern,
 25 are emitted in a much higher volume than the

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1 pollutants that were previously regulated.

2 The EPA estimates that this higher threshold
3 will allow states to cover about 2/3 of greenhouse gas
4 emissions naturally from stationary sources. This new
5 threshold does not eliminate the existing major source
6 threshold for previously regulated emissions of
7 concern of 100 tons per year.

8 Without a different threshold for greenhouse
9 gases, Minnesota would be obligated to use the
10 existing permit threshold of 100 tons per year. In
11 that case the MPCA would need to permit an estimated
12 120,000 small sources as major sources. Major sources
13 are typically businesses such as power plants or
14 larger manufacturing facilities.

15 Smaller sources that might become major
16 sources in the absence of these proposed rules
17 including many residences, schools and small
18 businesses. For example, we estimated that the
19 heating system for a building with about 3,300 square
20 feet, which could be a single or multifamily
21 residence, could emit more than 100 tons per year of
22 carbon dioxide and require a major source permit
23 unless the MPCA adopts the proposed greenhouse gas
24 permit threshold.

25 In addition to the proposed permit threshold,

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1 state-level permits. These provisions allow sources
2 with lower actual emissions to retain their existing
3 permits. The proposed rules also add methods for
4 compliance demonstration specific to greenhouse gases.

5 Because the MPCA was opening its air permit
6 rules to make changes regarding the addition of
7 greenhouse gas in permits, the MPCA took the
8 opportunity to propose several housekeeping changes I
9 will now describe.

10 The MPCA identified its intention to make
11 minor housekeeping amendments, along with the changes
12 to comply with the new Federal air permit thresholds
13 for greenhouse gases that I discussed earlier, in the
14 initial Request for Comments published on August 29,
15 2011. This intention was also listed in the public
16 notice on July 9, 2012, for the comment period on the
17 proposed rules.

18 The rules as proposed incorporate a Federal
19 new source performance standard or NSPS that applies
20 for stationary spark ignition internal combustion
21 engines. The NSPS is a Federal requirement that all
22 states must implement.

23 By adopting this standard, the MPCA can
24 enforce the standard and provide more permit options
25 for facilities that have this type of equipment.

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1 the contents of the proposed rules related to
2 greenhouse gases include the following: Proposed rule
3 changes to incorporate the Federal greenhouse gas
4 regulations include new definitions such as what
5 specific greenhouse gas compounds are included for
6 permit purposes, the definition of carbon dioxide
7 equivalent, and the definition of subject to
8 regulation.

9 The MPCA also proposed to adopt the EPA's
10 temporary deferral of biogenic carbon dioxide from the
11 calculation of potential air emissions for permit
12 applicability. Based on comments the EPA received and
13 a petition on the subject, the EPA decided to conduct
14 further analysis of permitting requirements for
15 biogenic carbon dioxide emissions.

16 Consequentially, the EPA decided to defer
17 including biogenic carbon dioxide emissions in
18 permitting while it studied the question further.
19 Minnesota expects to include biogenic carbon dioxide
20 in the calculation for permit applicability when it is
21 required by the Federal rules.

22 In addition to incorporating required
23 elements of the Federal greenhouse gas permit
24 regulations, the MPCA proposes to modify portions of
25 its rules and add thresholds for greenhouse gases and

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1 The rules as proposed clarify in a number of
2 subparts that owners and operators of stationary
3 sources are subject to the permit application
4 requirements. The proposal does not alter the effect
5 of existing rules, but only clarifies who must apply
6 when an air permit application is required.

7 The owner and operator obligation already
8 existed in Minnesota Rules Parts 7007.0500, Subpart 2.
9 The alternative to clarifying that owners and
10 operators are subject to the permit application rules
11 is to retain the existing rule language. The existing
12 rules resulted in a few instances of confusion for
13 permit applicants which would be resolved with the
14 clarification in the proposed rules.

15 We note that subparts related to compliance
16 demonstrations such as monitoring, testing, reporting
17 and recordkeeping are unchanged. Either the owner or
18 the operator may undertake those actions.

19 The proposed rule changes are a result of the
20 MPCA's working with the Minnesota Office of the
21 Revisor of Statutes on how best to make this
22 clarification.

23 The rules as proposed modify the procedures
24 governing minor permit amendments in Part 7007.1450.
25 These proposed revisions address triggers such as

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1 changes to permit conditions that do not fall under
 2 administrative or major permit amendments.
 3 The MPCA received comments during the public
 4 notice that the time period for submitting a new
 5 permit application as proposed, 30 days, was too short
 6 and therefore was impractical for permittees to meet.
 7 After deliberations, the MPCA intends to
 8 revise this timeframe in the final rules from 30 days
 9 to 120 days to be consistent with a similar Federal
 10 regulation.
 11 This is the only changes that the MPCA plans
 12 to make to its rules as proposed, and believes that
 13 providing an additional 90 days to submit a new permit
 14 application is reasonable, is within the
 15 originally-proposed scope of these rules, and does not
 16 substantially change the general intent or effect of
 17 the proposed rules.
 18 The rules as proposed rewrite part 7007.0150,
 19 Permit Required, Subpart 1, Item A to be consistent
 20 with Minnesota Statutes Section 116.081 on that same
 21 subject.
 22 The rules as proposed allow name changes for
 23 general permits and registration permits to be made
 24 with an administrative permanent amendment, the least
 25 burdensome permit amendment process.

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1 The rules as proposed rewrite parts
 2 7007.1110, Registration Permit General Requirements,
 3 Subpart 11a. This part describes when a new
 4 regulatory requirement affects a facility's permit
 5 type. The proposed wording is intended to be clear
 6 about the timing of notifications and permit
 7 applications.
 8 The proposed rules also add similar language
 9 for capped permits under Parts 7007.1142.
 10 In summary, I've provided you with an
 11 overview of the Agency's published goals for the
 12 proposed greenhouse gas permit rulemaking, namely:
 13 Allowing the MPCA to maintain its authority to issue
 14 permits under the Federal Clean Air Act; maintaining
 15 consistency between Minnesota's rules, other states
 16 and the EPA; avoiding the need to permit thousands of
 17 small sources such as homes and small businesses; and
 18 making several housekeeping changes.
 19 Thank you for your time and attention. I
 20 will be happy to respond to questions.
 21 THE JUDGE: Okay. Thank you. All
 22 right. Any other presentations by the Agency before
 23 we turn it over to other presenters or commenters?
 24 Okay. Having heard none, then I guess I will retrieve
 25 the list of folks that have indicated they wish to

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1 make a comment today, and we will start with that
 2 list.
 3 MR. COOLEY: Can we submit what
 4 Barbara Conti just read as part of the record?
 5 THE JUDGE: Oh, sure. Let's call
 6 this Exhibit 1, it's the remarks from Ms. Conti. I
 7 have marked it as Exhibit 1 and received.
 8 Okay. Alan Muller. Is that you, Mr. Muller?
 9 MR. MULLER: That is me, Your Honor,
 10 the guy who came in late.
 11 THE JUDGE: You don't need to move
 12 too far then, do you, you're right at the microphone
 13 to your area there. Why don't you state your full
 14 name for us and spell it.
 15 MR. MUELLER: My name is Alan
 16 Muller, A-L-A-N, M-U-L-L-E-R, and I live at 1110 West
 17 Avenue in Red Wing, Minnesota.
 18 THE JUDGE: Are you associated with
 19 any organization?
 20 MR. MUELLER: I am speaking for
 21 myself only this afternoon.
 22 THE JUDGE: Okay. Thank you. You
 23 may proceed.
 24 MR. MUELLER: I would like to begin
 25 with some questions, and perhaps Ms. Conti is the most

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1 appropriate person to direct this question to, and I
 2 am looking at this primarily through the framework of
 3 the SONAR document, Your Honor, which seems to me the
 4 most straightforward one piece statement of what we
 5 are about today.
 6 At Page 14 in the section additional notice,
 7 actually it jumps over to Page 15, there is a list of
 8 presentations that were made as part of the statutory
 9 requirement for additional outreach, and I see that it
 10 says, "Presentations were made to conferences and
 11 industry groups," skipping a little bit, "the
 12 Minnesota Chamber of Commerce, the Hennepin County Bar
 13 Association, the Ethanol Work Group, the Next
 14 Generation Energy Board, legislators, other
 15 departments and representatives of the agriculture
 16 community." What I don't notice on that list is any
 17 mention of public interest groups or environmental
 18 advocacy groups, so I would like to ask you are those
 19 omissions, or did you not, in fact, reach out and
 20 present to any such groups; and, if not, why not?
 21 MS. CONTI: Judge Cervantes,
 22 interested parties, the list of presentations that are
 23 in the SONAR were made during the temporary rule
 24 process, and those were mainly made in response to
 25 requests that the Agency received for staff to speak.

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1 Because we were using the Good Cause
2 Exemption process, there were not the normal public
3 hearings or public information meetings that we might
4 use during the standard rulemaking process.

5 In between the Notice of Intent to make
6 permanent rules and the public notice, we did have an
7 informational meeting, which was publicized on our
8 website and through our usual methods, it was in the
9 public notice, and that was held here at the MPCA. We
10 did not have a very high turnout for that meeting
11 regrettably.

12 MR. MUELLER: Before we continue,
13 maybe, Barbara, you can stay here because I think we
14 are going to be going back and forth here on a few
15 questions. Is it appropriate to ask that those of us
16 who are offering testimony to be placed under oath?

17 THE JUDGE: Normally we don't do
18 that. This is not a court proceeding, but we presume
19 people will be honest in their remarks.

20 MR. MUELLER: I am asking because I
21 have attended many OAH hearings at which people have
22 been placed under oath.

23 THE JUDGE: Well, yes, we conduct
24 many hearings where that is the case. This is not one
25 of those cases. Based at least on my experience, I

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1 question was about outreach, and it looks to me as if
2 you reached out to the Chamber of Commerce and the
3 ethanol industry people, but you didn't reach out to,
4 for example, the Sierra Club or the Audubon Society or
5 other representatives of environmental concerns, and
6 to me that suggests a bias in your process or a bias
7 in the way you looked at that, so I wonder if you
8 could give us a little more information on that.

9 MS. CONTI: As I stated, most of the
10 presentations listed in the SONAR were made in
11 response to requests that the MPCA received from these
12 organizations to speak to them about the rules. The
13 proactive outreach that the MPCA conducted for the
14 temporary rules were generally directed toward the
15 facilities who would be required to make a change in
16 their permitting or a change in their operations, and
17 so we did a lot of outreach to permit holders through
18 a number of different mechanisms.

19 Because of the short timeframe, we did not
20 specifically reach out to all possible interested
21 parties. The permanent rulemaking provides the
22 opportunity for public input from additional sources.

23 MR. MUELLER: All right. Thank you.
24 Now, I have gone through the first 12 pages of the
25 SONAR, and I circled every term that sounded like

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1 have not had to call people and put them under oath.

2 MR. MUELLER: Okay. Well, for the
3 record, I am requesting that we be placed under oath.

4 THE JUDGE: Well, all right, please
5 rise, Ms. Conti.

6 BARBARA JEAN CONTI,
7 the Witness in the above-entitled
8 matter after having first duly
9 sworn testifies and says as follows:

10 THE JUDGE: Thank you. You may be
11 seated. Do you want to be put under oath as well?

12 MR. MUELLER: It seems only fair. I
13 don't want to suggest any kind of different treatment
14 for any of the parties.

15 THE JUDGE: Please rise and raise
16 your right hand.

17 ALAN MULLER,
18 the Witness in the above-entitled
19 matter after having first duly
20 sworn testifies and says as follows:

21 THE JUDGE: Thank you. You may be
22 seated.

23 MR. MUELLER: Ms. Conti, just to
24 come back to the question I raised, there is mention
25 of a public informational meeting in here, but my

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1 streamlining, regulatory relief and other such terms.
2 Here we have avoiding, avoided, relieves, protects
3 small sources from the requirement to obtain an air
4 emissions permit. I went through the entire document
5 and I wasn't able to find any references to the threat
6 posed to Minnesota by greenhouse gas emissions.

7 So, again, I am asking you if this record is
8 not suggestive of a bias that the Agency in doing this
9 rulemaking seems to me from the record to be more
10 concerned about protecting dischargers than protecting
11 the people of Minnesota from the consequences of
12 global warming. If I am missing something there,
13 maybe you could enlighten me.

14 MS. CONTI: The MPCA is adopting or
15 proposing to adopt these rules to comply with Federal
16 regulations that greenhouse gas emissions be included
17 in air permits.

18 As I stated in my testimony, based on our
19 understanding of the emissions, approximately
20 67 percent of emissions from stationary sources, which
21 are buildings like factories and power plants, would
22 be covered by the permitting regulation.

23 The permit regulation did not specifically
24 require from US EPA reductions. It requires
25 greenhouse gases to be included in permit

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1 applications, and EPA also requires greenhouse gases
2 to be reported to them.

3 I understand the concern that greenhouse
4 gases have a negative effect on the environment, but
5 the purpose of this rulemaking was to implement one
6 component of EPA's overall strategy to address
7 greenhouse gases, which is just the permit accounting
8 side.

9 THE JUDGE: I would like
10 clarification as well, did you indicate, Ms. Conti, in
11 your initial remarks that greenhouse gases were not
12 being regulated prior to this rulemaking process?

13 MS. CONTI: Judge Cervantes, the
14 regulation of greenhouse gases for stationary sources
15 like factories and power plants is a relatively new
16 development. In 2007 the State of Massachusetts won a
17 Supreme Court case to say that greenhouses gases were
18 a pollutant of concern relative to mobile sources,
19 cars and trucks. That triggered a chain of events
20 that led to EPA eventually proposing rules for
21 stationary sources. So the EPA regulations in 2010
22 were the first time that they addressed greenhouse
23 gases in permitting.

24 The year before they had passed a regulation
25 requiring facilities to report greenhouse gas

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1 emissions have yet a different term, and they're
2 called area sources where they might not receive an
3 individual permit, but there might be a number of them
4 in an area. An example of that would be, for
5 instance, a dry cleaner.

6 THE JUDGE: Thank you. Mr. Muller.

7 MR. MUELLER: Thank you. Ms. Conti,
8 the SONAR says that estimates, I don't know the source
9 of the information, and perhaps you can provide it,
10 you have estimated that 120,000 sources would be
11 required to get permits if the limit isn't raised from
12 100 tons to 100,000 tons. Am I reading that
13 correctly?

14 MS. CONTI: That is the estimate
15 that we are using. The information comes from the
16 US EPA's regulatory impact analysis. EPA provides
17 numbers for the national level, and Minnesota
18 generally uses a 2 percent of the national threshold
19 for our estimates. We have approximately 2 percent of
20 the population, and so it's not an exact number, but
21 it's one that has some precedent in looking at costs
22 and numbers of affected facilities.

23 MR. MUELLER: Okay. Now, EPA has a
24 program in which it requires the reporting of
25 greenhouse gas emission sources of greater than 25,000

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1 emissions to them.

2 And subsequently they have also passed other
3 regulations that are more specific to individual types
4 of control equipment to limit the amount of greenhouse
5 gases, and those are called new source performance
6 standards. Those were promulgated so recently that we
7 were not able to incorporate those new source
8 performance standards into this rulemaking like we did
9 with the engine standard, that would be something the
10 MPCA will do in the future.

11 THE JUDGE: So that is for another
12 day then?

13 MS. CONTI: Yes.

14 THE JUDGE: When you talk about
15 stationary producers of greenhouse gases, give me an
16 example of what that might be.

17 MS. CONTI: A stationary source, EPA
18 differentiates between mobile sources like cars and
19 trucks or off-road construction equipment and
20 stationary sources, which are things like that stay
21 put like a factory or a power plant or this building,
22 for example.

23 In general when we talk about stationary
24 sources we generally mean sources with higher levels
25 of air emissions. Sources with small amounts of air

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1 tons carbon dioxide equivalent, and I took a look at
2 the page for Minnesota, and what I thought I saw was
3 132 sources were reported for the State of Minnesota,
4 and a number of them were reporting amounts less than
5 25,000, for whatever reason they chose to report, so I
6 subtracted them, and I came up with 114 sources
7 discharging 25,000 tons or more. Out of that I came
8 up with -- and I will submit this information as
9 exhibits, Your Honor, if that would be helpful.

10 THE JUDGE: That is fine.

11 MR. MUELLER: -- 46 sources
12 discharging more than 100,000 tons. So it would
13 appear that of the 120,000 sources that you're
14 estimating in Minnesota, only 46 of them or roughly 46
15 would be captured by the rule you're proposing, but I
16 think I heard you say that 67 percent of the
17 stationary source emissions would need to be permitted
18 under this rule, did I hear that correctly?

19 MS. CONTI: US EPA estimated that
20 under the promulgated tailoring rule, the Federal
21 rule, that 67 percent of emissions nationally would be
22 covered by permits.

23 MR. MUELLER: Well, I am having
24 trouble with the idea that 46 of these sources out of
25 120,000 would be accounting for 67 percent of the

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1 stationary source emissions in Minnesota. Even
 2 granting that some of these are relatively large, it
 3 seems like a counter-intuitive, kind of unbelievable
 4 number; and if you could provide any further
 5 documentation of that, that might give some of us some
 6 comfort that the rule you're proposing is adequate.
 7 MS. CONTI: The purpose of the rule
 8 is to implement the Federal threshold in Minnesota.
 9 The US EPA actually proposed the permit rule with a
 10 threshold of 25,000 tons per year. The US EPA
 11 received over 400,000 comments on their rule, and
 12 their final rule was promulgated with a threshold of
 13 100,000 tons per year.
 14 I did not go through Minnesota's list of
 15 reporters and add up the emissions to see what the
 16 percentage was of large emitters. We have done some
 17 estimates for smaller sources, and a relatively small
 18 building, a restaurant, a small business would need to
 19 be permitted as a Federal major source without this
 20 proposed rule change.
 21 And time and resources to accomplish that
 22 goal would be high. The MPCA believes it's reasonable
 23 at this point in time to simply incorporate the
 24 Federal permit threshold.
 25 MR. MUELLER: Well, I would repeat

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1 The statute is a stand-alone requirement that
 2 companies must adhere to. The MPCA was not required
 3 to enact rules to enable that program to move forward.
 4 The utility companies in Minnesota are already taking
 5 actions to meet the requirements of the statute.
 6 MR. MUELLER: So are you saying that
 7 the MPCA doesn't consider that it is under any
 8 obligation to adopt rules and regulations that are
 9 consistent with this statute calling for further
 10 reduction in greenhouse gas emissions?
 11 MS. CONTI: The legislation does not
 12 require the MPCA to adopt rules to enact this
 13 statutory for requirement. It is effective as a State
 14 law.
 15 MR. MUELLER: Okay. And is the MPCA
 16 involved in any way in the implementation of that
 17 statute?
 18 MS. CONTI: I would like to refer
 19 that question to my manager, Frank Kohlasch, he is
 20 active on a committee with the Department of Commerce
 21 and the Public Utilities Commission on that subject.
 22 THE JUDGE: Good afternoon. Could
 23 you please state your full name, and spell you last
 24 name for me.
 25 MR. KOHLASCH: Thank you, Your

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1 my request, if you could provide some documentation,
 2 that would be helpful.
 3 Now, I don't want to do a lot of talking now
 4 about the nature of climate change and the cause of it
 5 and the threat that it poses to the State of Minnesota
 6 mainly because I think there is some other people in
 7 the room who are prepared to do that, but I would like
 8 to make reference to the Minnesota New Generation
 9 Energy Act that was passed in 2007, I believe with
 10 strong bipartisan support. It calls for cutting the
 11 State's greenhouse gas emissions to 15 percent below
 12 2005 base levels by 2015, 30 percent by 2025, and
 13 80 percent by 2050.
 14 I am wondering if you can explain to us if
 15 you evaluated your rule for consistency with that law
 16 and how I can understand increasing the permitting
 17 breakpoint by 1,000 times is consistent with this
 18 statutory requirement to reduce greenhouse gas
 19 emissions.
 20 MS. CONTI: I would first like to
 21 respond to your question or your comment about the
 22 background information. There is a link at the end of
 23 the SONAR, if you go to the website, to the EPA's
 24 regulatory impact analysis, which is where some of the
 25 supporting information in the SONAR came from.

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1 Honor. Name is Frank Kohlasch, spell that
 2 K-O-H-L-A-S-C-H, I am Manager of the Air Assessment
 3 Section for the Minnesota Pollution Control Agency,
 4 which is responsible for this rulemaking before you,
 5 and also responsible for parts of the Agency's
 6 implementation of greenhouse gas reductions in the
 7 State.
 8 I would like to make one clarification to the
 9 discussion about the Next Generation Energy Act,
 10 defined in Minnesota Statutes 216H.01 and .02 is where
 11 the goals are stated, and I want to emphasize that
 12 these were established by the Legislature as emission
 13 reduction goals.
 14 There were, as Barbara stated, there were no
 15 specific requirements of the Pollution Control Agency
 16 or the Department of Commerce to implement specific
 17 actions or rules under this statute. What was
 18 required under the Next Generation Energy Act by the
 19 Legislature were two primary actions.
 20 One was to convene a stakeholder group to
 21 establish potential greenhouse gas reduction actions
 22 that the State could take. The Pollution Control
 23 Agency and the Minnesota Department of Commerce
 24 completed that activity, which was known as the
 25 Minnesota Climate Change Action Group, MCCAG. In 2008

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1 it established a list or a menu of potential
2 reductions and actions that the State could take if
3 implemented policy was decided by the Legislature in
4 order to achieve these goals.

5 Secondly, the two agencies were required to
6 submit reports to the Legislature on an annual basis
7 to identify legislative policies that could be enacted
8 by the Legislature to reduce greenhouse gases in
9 Minnesota and achieve these goals. Both agencies have
10 met that legislative reporting requirement each year.

11 The Pollution Control Agency and the
12 Department of Commerce are also required every two
13 years to report on Minnesota's actual greenhouse gas
14 emission estimates and our progress to those goals.

15 There are other requirements within the Next
16 Generation Energy Act that require power facilities or
17 electric generating units in Minnesota to undertake
18 certain actions or seek certain remedies through the
19 Public Utilities Commission before they can make
20 certain decisions on adding, for example, coal plants
21 in Minnesota, and those are being implemented by the
22 Department of Commerce and the Public Utilities
23 Commission.

24 MR. MUELLER: I am happy to continue
25 the dialogue with Mr. Kohlasch rather than Ms. Conti.

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1 if you can't show that, the regulation on its face is
2 not ready to be adopted.

3 MR. KOHLASCH: Your Honor, the
4 Pollution Control Agency views this rulemaking again
5 in the narrow scope that it has been presented with,
6 and that is to maintain the Agency's authority to
7 issue permits under the Clean Air Act and bring our
8 air permitting rules in compliance with the Federal
9 requirements to regulate greenhouse gases at a
10 threshold above 100,000 tons per year.

11 Regarding the question about regulatory
12 relief discussion, that is a prominent part of the
13 discussion and the purpose for these rules both at the
14 Federal level and at the State level. The resources
15 that were required by the State to permit facilities
16 at the 100 ton per year threshold now would be
17 unworkable, and the EPA recognized that same fact when
18 they developed their Federal rule that now applies to
19 the State of Minnesota.

20 Looking at the Next Generation Energy Act,
21 again, there is nothing within the Next Generation
22 Energy Act that is requiring the Agency to take
23 affirmative action on its permitting program for
24 greenhouse gases.

25 The Next Generation Energy Act sets out a

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1 THE JUDGE: You may proceed.

2 MR. MUELLER: I appreciate the
3 information you just gave us, but I think we're here
4 today to look at the consistency of the proposed
5 regulation with Minnesota public policies, and it does
6 appear to me on the face of things that the proposed
7 rule is not consistent with the New Generation Energy
8 Act wherever other nice things might be happening
9 under the rubric of that statute.

10 But maybe you could talk a little bit
11 about -- I mean let me back up a little bit. On
12 Page 11 of the SONAR at Item 6, the second paragraph
13 it's stated, "The new permit threshold for GHGs,
14 greenhouse gases, is intended to offer regulatory
15 relief to small sources." And as I mentioned before,
16 I think the notion of regulatory relief is pervasive
17 here, but what is absent to me is any demonstration in
18 the SONAR that this regulation is consistent with the
19 State's established public policy goals of controlling
20 climate change.

21 Perhaps you could talk a little bit about
22 that question, how you determine that this proposed
23 regulation is consistent with those goals, how this
24 regulation will contribute to the abatement of
25 greenhouse gas emissions in Minnesota because I think

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1 cooperative effort between the Pollution Control
2 Agency and the Department of Commerce to identify
3 activities that the State can take and primarily that
4 the Legislature can pass in order to achieve the
5 reductions set forth in Minnesota Statutes 216H.02,
6 the Next Generation Energy Act.

7 It also recognizes the role of both the
8 Department of Commerce and the Minnesota Pollution
9 Control Agency in the Renewable Energy Act and the
10 renewable energy standards that the State has placed.

11 The question about does the Pollution Control
12 Agency see this rule as being consistent with the Next
13 Generation Energy Act, we do see that this action is
14 consistent with the role of the Next Generation Energy
15 Act because the Pollution Control Agency needs to
16 maintain its permitting authority under the Clean Air
17 Act, and these rules will enforce that.

18 There has been at the Legislature for the
19 amendments to the Next Generation Energy Act much
20 discussion about how much of the regulations that are
21 happening at the Federal level and that would flow
22 down to the State level would impact smaller sources,
23 and we believe that this type of rulemaking is
24 consistent with those discussions that would seek to
25 ensure that the Pollution Control Agency regulates

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1 greenhouse gases as appropriately under the Clean Air
2 Act, but does not unduly burden smaller sources for
3 the permitting purposes, and does not create a
4 permitting system in Minnesota that would be greatly
5 inconsistent with Federal guidelines and with other
6 states.

7 MR. MUELLER: Okay. Would you agree
8 that in general the legal situation of Minnesota with
9 regard to Federal regulations is that the State can
10 adopt stricter standards than Federal regulations
11 require, but not less strict standards?

12 MR. KOHLASCH: Your Honor, that is
13 correct. The State may adopt more stringent
14 regulations than the EPA would establish, but we
15 cannot establish less stringent regulations than the
16 EPA would require and still maintain our ability to
17 perform our delegated actions.

18 MR. MUELLER: Okay, thank you.
19 Then, in fact, contrary to some of what is in the
20 SONAR and contrary to some of the testimony, the State
21 does not have to adopt the 100,000 ton per year
22 breakpoint to maintain its ability to do Federally
23 delegated permitting. It only has to maintain
24 consistency and could, in fact, adopt 25,000 tons or
25 200 tons or some other number if a determination was

1 EPA. The primary distinction for that program would
2 be that once EPA passes a regulation that relates to
3 prevention of significant deterioration permitting at
4 the Federal level, then Minnesota will automatically
5 have those requirements placed upon it, and there
6 would be no specific rulemaking changes required at
7 the State level for those to become effective.

8 Though in the case it often times does
9 require State rule changes to ensure that there is
10 consistency between State rules and the Federal
11 requirement.

12 On the operating permit side being approved,
13 the primary distinction there being that once EPA
14 passes a regulation for those, there is slightly more
15 time for the State to act in order to implement those
16 Federal regulations into State regulations.

17 MR. MUELLER: Okay. So as I
18 understand what you're saying and what I have read and
19 what is in my own head, the State did not, in fact,
20 have to do a rulemaking with regard to the prevention
21 of the signification deterioration program because
22 that goes into effect automatically with or without an
23 administrative proceeding in the State of Minnesota,
24 am I correct about that?

25 MR. KOHLASCH: Your Honor, no, that

1 made that that was in the public interest of
2 Minnesota. Am I right there?

3 MR. KOHLASCH: Your Honor, while
4 there is opportunity for a state to be more strict,
5 the Pollution Control Agency, and this is demonstrated
6 in the Statement of Need and Reasonableness agreeing
7 with the EPA, that regulating these greenhouse gases
8 at levels below the Federal threshold would be
9 untenable. There are not the resources to do that.

10 It would potentially threaten our authority
11 under the -- from EPA because our regulations would be
12 so far out of compliance with Federal regulations that
13 they may consider that deficient.

14 MR. MUELLER: Could you -- now,
15 there is a discussion in here of two general
16 categories of programs, one being prevention of
17 significant deterioration, which I understand to be a
18 delegated program, and then the Part 70 operating
19 permit program that is an EPA approved program. Maybe
20 it would be useful for all concerned if you could give
21 us a brief explanation of what that means, the
22 differences between those two programs.

23 MR. KOHLASCH: Your Honor, the
24 prevention of significant deterioration, PSD,
25 permitting in Minnesota is a delegated authority from

1 is not correct. Our rules do affirmatively state
2 permitting thresholds for the MPCA permitting program,
3 and we do need to change those, and that is one of the
4 reasons why we had to use the exempt rulemaking
5 process due to the short compliance timeframes that
6 EPA set forth in the original rule, and then why we
7 need to replace these rules permanently with this
8 rulemaking.

9 MR. MUELLER: I will address that in
10 a follow-up item. What we're hearing here, I think
11 where we're at is we agree that the State of Minnesota
12 could be stricter, could adopt lower limits if it
13 chose to do so, but it's not choosing to do so.

14 Now, according to what Ms. Conti has told us,
15 if we didn't do anything and left the existing Clean
16 Air Act breakpoints of 100 tons in place, we would be
17 permitting 120,000 facilities. By multiplying that by
18 1,000 times, by going from 100 tons to 100,000 tons
19 you're going to be permitting 46 facilities. If we
20 left -- if we chose an intermediate value of 25,000
21 tons, then you would be permitting 114 facilities,
22 permitting them with regard to carbon dioxide
23 equivalent emissions.

24 There is a big difference between 120,000 and
25 either 46 or 114, so my question is did the PCA

1 evaluate any intermediate breakpoints with the burden
2 on the Agency that would exist at different levels?
3 Suppose we chose 1,000 tons, 5,000 tons, it would be
4 much easier to make an informed determination that
5 what you're proposing is the right thing if we were
6 aware of some of the alternatives.

7 MS. CONTI: Your Honor, interested
8 parties, I would like to take a step back about the
9 level of emissions because there is confusion between
10 what a permit threshold is and what the reporting
11 threshold is. The permit thresholds are based on a
12 maximum operating scenario case. A facility must
13 assume that their piece of equipment is operating 24
14 hours a day, 7 days a week, 365 days a year to make
15 their calculation of what their emissions are for
16 whether a permit is required.

17 If they have a permit in place that has a
18 Federally enforceable limit, then they can use that
19 limitation to calculate their potential emissions.

20 Having a permit threshold of 100,000 tons per
21 year does not correlate exactly to the actual
22 emissions which is what is required to be reported.
23 So a facility that might be reporting 1,000 tons of
24 actual carbon dioxide emissions would most likely have
25 a considerably higher potential to emit. It's the

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1 remarks. I have got eight or nine other people that
2 want to testify here today. As I indicated at the
3 onset in my remarks, this is not a court hearing. I
4 have permitted some latitude for you to inquire of the
5 witnesses as to particular questions, but you don't
6 need to make your point by having them admit or deny
7 questions that you ask.

8 You can make your points directly, so the
9 points you have raised -- some of the points you have
10 made so far is that you didn't believe necessarily
11 that their outreach was as wide as you would have
12 liked, you have questioned some of the other more
13 technical matters as we have discussed here for almost
14 an hour or probably an hour or so.

15 In fairness to the other people that want to
16 make remarks, I am going to ask you to please make
17 your points now, and then we will move on with the
18 rest of the folks that wish to comment here this
19 afternoon.

20 MR. MUELLER: I agree, Your Honor, I
21 have taken up a lot of time, and it's not my intent to
22 monopolize the hearing. It does, as a practical
23 matter in my experience, take some -- these are highly
24 technical issues, and it takes some time to dig into
25 what is what, and I appreciate your allowing that

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1 potential to emit that governs whether a permit is
2 required.

3 We've heard some numbers of facilities as far
4 as who is reporting and at what level given today. I
5 would like to provide some context in terms of
6 permitted facilities. Our existing permit threshold
7 for operating permits, this is not construction, but
8 for ongoing operations in the existing rule was
9 100 tons per year.

10 The MPCA's permit program has approximately
11 2,500 active permits. Of those permits approximately
12 300 are major sources. The rest are permitted as
13 State only sources or non-major sources.

14 So there is a certain level of permitting
15 that we get looking at pollutants other than
16 greenhouse gases. These are pollutants such as sulfur
17 dioxide, particulate matter, oxides of nitrogen. They
18 are emitted as much lower levels.

19 We are getting a little bit off the topic of
20 whether the MPCA should adopt the Federal permit rule,
21 but I thought that this would be useful background
22 information that there is potential emissions and
23 actual emissions.

24 THE JUDGE: Thank you. Mr. Muller,
25 I am going to ask you to start summarizing your

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1 time.

2 I have many more questions and a lot more to
3 say about this, but I will just conclude with a few of
4 my own thoughts. Having looked through this
5 documentation in some detail, I believe that the
6 permit -- the proposed -- okay, sorry. I believe that
7 the proposed regulation is scandalously disregarding
8 of the public interest of Minnesota and the people who
9 live in Minnesota.

10 I believe that on its face this proposed
11 regulation is all about regulatory relief,
12 accommodating special industrial interests. However,
13 it cannot be a secret to any educated person that
14 climate change poses a grave threat to the people of
15 Minnesota, to the climate of Minnesota, to the
16 industries of Minnesota, and what we deserve from an
17 entity called the Minnesota Pollution Control Agency
18 is something other than what we are getting here.

19 Now, it's no secret that the folks running
20 the Legislature don't like environmental regulation,
21 they have cut the budget of the Agency, they've
22 badgered the regulatory programs with numerous
23 statutory provisions intending to make it more
24 difficult for the Agency to carry out its
25 responsibilities, as has the Governor with executive

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1 orders, and I sympathize with that, and I recognize
2 that, and I think it is no secret that the MPCA air
3 permitting program is not even pretending to keep up
4 with the task of renewing existing permits, many of
5 which have been expired for many years.

6 I could cite a number of cases in which I
7 have said, well, when are you going to work on this
8 permit, when are you going to assign somebody to it,
9 and there is no answer.

10 So there is no doubt that the Agency has been
11 placed in a very difficult position, and I don't want
12 to seem antagonistic to that.

13 It would be very difficult for the MPCA air
14 program to take on a high volume of additional
15 responsibilities without additional funding, but that
16 is not what we're here about. We're here about the
17 health and welfare of the people of Minnesota, and
18 this permit is not consistent with that, and I would
19 urge you not to develop a report recommending that it
20 be approved as proposed.

21 I appreciate all the time you have given me.
22 I appreciate the patience of other people in the room.
23 Thank you.

24 THE JUDGE: Thank you, Mr. Muller.
25 As I indicated, you can make specific recommendations

1 In my nervousness and unfamiliarity with this
2 process, I actually looked up the definition of
3 testimony. As a side note, the definition ranged from
4 a divine decree attested in the Scriptures to an open
5 acknowledgement. For your sake, I am going to stick
6 with open acknowledgement.

7 Your Honor, the people in this room
8 testifying in the name of global warming are not
9 extremists or terrorists looking to spread a panic for
10 some sick personal thrill. We are not inclined to
11 spend our days with the emotional and psychological
12 weight of climate change bearing down on us. But you
13 don't have to look far to read the science or connect
14 the dots between extreme weather and global warming,
15 deteriorating human health and increasing
16 concentrations of greenhouse gases, in particular
17 carbon dioxide, political corruption at the hand of
18 fossil fuel industries, failing economies, and
19 increasing financial burdens of natural disasters,
20 failing crop and ecological systems, migrating
21 disease, the list continues, and it's not pretty.

22 These are not imagined predictions. This is
23 happening in our communities and in communities around
24 the world. Believe me, if we could set this
25 understanding aside and continue living in a dream of

1 as to what the proposed rule should be and why you
2 feel that is the case. You will have until I believe
3 it's, what did I say, the 19th of September to do
4 that, and you can write to us online and we will note
5 those comments should they come. All right. Thank
6 you.

7 Turning to the next person on the list, that
8 is Kate Fay. Is Kate here? Please come forward,
9 Ms. Fay. State your full name for the record, and
10 spell your last name for me.

11 MS. FAYE: My name is Kate Faye,
12 it's spelled F-A-Y-E. My address is 1362 Larpenteur
13 Avenue West, Falcon Heights, Minnesota 55113. I am
14 here on behalf of myself and also on behalf an
15 organization called Minnesota 350.

16 THE JUDGE: Thank you.

17 MS. FAY: I am speaking to the
18 reasonableness of Rule Part 70.

19 THE JUDGE: Okay.

20 MS. FAY: I come today with my heart
21 and my mind tied together as one. I am not going to
22 bring forth the science, the technicalities of this
23 rule and rules of the law and all its intricacies. I
24 am happy to leave that to others who are much smarter
25 than I am.

1 endless fossil fuel resource, consumption and
2 production and individual lifestyle choices that have
3 been present in mainstream Minnesota, life would be
4 much less of a burden.

5 The only problem with that dream is that it
6 bursts. That dream bursts every time you walk outside
7 and feel the unseasonably hot weather last winter,
8 March, June, July, or recognize that the new normal is
9 unpredictable.

10 It bursts every time you hear a story of a
11 farmer who has lost 90 percent of their crop, their
12 livelihood due to flooding and hail or by drought,
13 and, of course, the consequences of that failed crop
14 on our pocketbooks in the form of higher food prices.

15 That dream bursts wide open as the
16 concentration of carbon dioxide in the atmosphere hits
17 new levels with no hope of it magically lowering in
18 the next couple of centuries at best.

19 And that dream becomes a nightmare when we
20 look in the eyes of our children and know in our
21 hearts that their future and their children's future
22 are already devastatingly bound to the choices,
23 decisions, laws and actions that we take and don't
24 take today.

25 It is not fair or unfair the weight and

1 significance of each and every decision we have to
 2 make. It is purely our reality, handed to us from our
 3 forbearers.
 4 My question to you and to everyone in this
 5 room is are we going to continue dreaming as we pass
 6 on even greater burdens to future generations? I am
 7 not willing. It is our time to embrace the weight,
 8 the knowledge we have, the fear, the vision and use it
 9 to match the magnitude of climate crisis in every
 10 decision that we make.
 11 And the most important decision in this
 12 moment, in this room with these people and the
 13 information we have at hand all comes down to a single
 14 question. By adopting permanent rules implementing
 15 Federal air permit thresholds for greenhouse gases
 16 will we adequately and sufficiently address global
 17 warming, or will it be a step backward for what the
 18 State of Minnesota needs to be doing to give humanity
 19 a chance?
 20 If it will, then let's move it forward. But
 21 if it won't, I ask that we keep in mind the true cost
 22 of this decision to our children, our communities, all
 23 other living species that we depend upon and share a
 24 home with, the planet. This is reality. This is an
 25 open acknowledgement of the burden and weight of the

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1 decision, Your Honor, nothing less.
 2 Thank you, Your Honor, for your consideration
 3 of this question.
 4 THE JUDGE: Thank you. I see you
 5 have got prepared remarks. Would you like to have
 6 those submitted as part of the record?
 7 MS. FAY: Yes.
 8 THE JUDGE: I misspoke earlier
 9 because Exhibits 1 through whatever came in before.
 10 MR. COOLEY: 11.
 11 THE JUDGE: I am going to take the
 12 comments as Exhibit A through whatever we receive, so
 13 I am going to adjust that first comment and call that
 14 Exhibit A, and then we will mark yours, Ms. Faye, as
 15 Exhibit B.
 16 MR. COOLEY: I have that prepared
 17 for you.
 18 THE JUDGE: Real good. Thank you.
 19 Thank you. Exhibit B has been marked and received.
 20 Okay.
 21 Turning to the next commenter, Mr. Ken
 22 Pentel. Welcome. State your full name, spell your
 23 last name for us.
 24 MR. PENTEL: Thank you for having
 25 this hearing. My name is Ken Pentel, and would you

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1 like a street address or a PO box?
 2 THE JUDGE: However you want to
 3 identify it.
 4 MR. PENTEL: My main address is
 5 PO Box 3872, Minneapolis Minnesota 55403. I am the
 6 founder and director of the Ecology Democracy Network,
 7 and I am here today for many reasons, but obviously
 8 we're focused on establishing a rule, a permanent
 9 rule, but I would like to just go over real quickly
 10 some of the concerns associated with the issue at
 11 hand, which is that we're at a very rapid rate of
 12 global warming on earth, which is triggering a variety
 13 of chaotic climate events on the planet which have been
 14 monitored regularly.
 15 I refer to an article by Dr. James Hanson and
 16 a variety of other writers from the Goddard Institute
 17 for Space Studies, and the Earth Institute, and the
 18 University of California in Santa Barbara. They --
 19 this is a 2006 article, but it's based upon research
 20 that had been going on since the early 1980s, so we
 21 have had trends, and it shows a trend associated with
 22 the rate of global warming on earth.
 23 So we are dealing with a rate that is moving
 24 at such a pace that we are having a hard time
 25 capturing and defining the condition. It's going very

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1 fast.
 2 So our response has to be I believe measured
 3 to the situation. I do not believe what is being
 4 asked here today by the Minnesota Pollution Control
 5 Agency is a measured response to the velocity of
 6 global warming.
 7 If you look at an article by Eugene Robinson
 8 from the Washington Post that came out July 4th of
 9 this year, he identifies a National Oceanographic and
 10 Atmospheric Administration saying this past winter was
 11 the fourth warmest on record in the United States.
 12 Metrologists have defined the months of March, April
 13 and May was the warmest since recordkeeping began in
 14 1895.
 15 NASA-Goddard Institute for Space Studies,
 16 which monitors global surface temperatures, reports
 17 that nine of the warmest ten years on record have
 18 occurred since 2000, and the warmest year of all was
 19 2010.
 20 So we're at a very high pace. This is about
 21 trends. It's not about if it's hot or cold today or
 22 hot or cold tomorrow. This is about trends we're
 23 dealing with, and it's happening at a very rapid rate.
 24 We can look at a variety of facilities in
 25 Minnesota. One of the things is that when we

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determine the cost factors, the pricing or the cost factors per kilowatt hours let's say, for example, for coal or oil as we are determining this discussion, one of the things that seemingly gets lost in this discussion is that we are inaccurately assessing the price of these fossil fuels. We are not taking into account the whole costs. We are tolerating externalise.

So we do not take into account the whole cost of mountaintop removal and the impacts associated with the non-human world and tailings that are left behind.

We are not taking into account the human health costs as well. There was recently a report by Integrity Project, a report that examines coal costs that came out June of this year, they say the social -- suggests that the US coal plants, their social costs as a result of premature deaths exceeds the value of the electricity they generate.

So once again we are in a diminishing return right now with our fossil fuel dependency at a variety of levels, not only the atmospheric impacts of global warming happening at a rate that we cannot capture right now or define and know the impacts of, but also the inaccuracies of the pricing of these fossil fuels.

If you look at, for example, in Ohio, the

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From 100 tons per year to 100,000 tons per year, that is not consistent with the objectives put forward.

And when we talk about established -- Minnesota deviating from the Federal rules, there are numerous examples of the State of Minnesota deviating from Federal rules. If we look, for example, at Northern Metals in Minneapolis, Northern Metals is permitted by the State of Minnesota. There is no Federal permitting. Minnesota took the initiative and we are going to permit this facility.

If we look at the mercury rules here in the State of Minnesota, we established stricter mercury rules than the Federal government. If I could quote at that time Governor Tim Pawlenty, the republican governor said that, "The goal the Federal government has set is too low and too slow." And I would agree with that in pertaining to this discussion. Global warming is happening at such a rate that the Federal government is not responding in a measured way, and that must be dealt with in an honest assessment, in my opinion.

As we have talked about in the Next Generation Energy Act, very strict rules have been set in the Next Generation Energy Act. We have shown as a state that we are going to not allow any large fossil

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mining issues, the costs associate with federal fees and state severance tax obtained from mining coal in Ohio is estimated at 32 million and 5 million. This leaves a deficit of 512 million for reclamation of all abandoned coal mines.

So if we are going to start managing the issue, we need to have an accurate accounting of the whole cost of this because that has been brought up, and that is used as an argument by the industry and by the regulatory agencies is the impacts on communities and jobs and so on.

So when we read last year the Administrative Law Judge had a hearing, the Environmental Quality Board was taking on a temporary rule associated with this discussion, now we are talking about the permanent rule, in the temporary rule the Minnesota law requires assurances that the proposed rules are necessary and reasonable and that any modification that the Agency made after the proposed rule is initially published do not result in the rules being substantially different from the Agency -- from what the Agency originally published.

We're seeing a dramatic, this is a substantially different shift from where we were to where we're going in this discussion, substantially.

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fuel power plants built in Minnesota in this law. No Minnesota utility can purchase electricity from an out-state utility 50 megawatts or more. No utility can import electricity from large fossil fuel power plants. I mean we have shown patterns that we will set stricter rules as a state.

We can look at states like California, for example, has set stricter rules for auto emissions. So it's not unprecedented to deviate from the Federal rules and create stricter rules as a state as guidance, and we could go on and on associated with that.

The other thing that I found somewhat disturbing, and there is much to talk about, the Minnesota Environmental Policy Act once again calls for an establishment of let's say, for example, preventing and eliminating threats to the biological condition in human health. This is a guide for the State and for the Minnesota Pollution Control agency.

So what I would like to talk about just real quickly as well is we could look at let's say, for example, the Silver Lake Power Plant in Rochester, Minnesota. The Silver Lake as of 2010, the greenhouse gas emissions of that facility were 98,715 tons, just short of the 100,000 ton limit. As I have talked

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1 about, one, we cannot measure the velocity and/or the
2 impacts of what we're doing to the atmosphere. Right
3 now it seemingly is a guessing game by everyone on
4 earth. We are just loading the atmosphere, we are
5 adding it from point sources and non-point sources;
6 but if we take into account whole costs associated
7 with this, what we are looking at is from this
8 facility alone it's what is attributed, according to
9 the Clean Energy Task Force out of a report Find Your
10 Risk From Power Plant Pollution, they attribute this
11 facility to 15 deaths per year, which is \$110 million;
12 heart attacks, 23; asthma attacks, 250; hospital
13 admissions, 10; chronic bronchitis, 9; asthma and ER
14 visits, 16.

15 So there are once again these costs are not
16 in the bottom line of the sources that are
17 contributing to greenhouse impacts, but also the human
18 health impacts that are not attributed.

19 But I would like to conclude, I would like to
20 say, I know I've got a lot to say, I wanted to mention
21 that we've got so many things to talk about, but I --
22 we're here today because of at a minimum shortcomings
23 in our ability to now analyze the problem many decades
24 ago. We are here today because of shortcomings in the
25 enforcement agencies. We're not here today because of

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1 success. We're here today talking in this hearing
2 because of failure. People have failed to have a high
3 ethical standard, they have failed to recognize this
4 beautiful planet we live on and the impacts we are
5 having on it, we have failed to recognize trends over
6 the last many decades, and we have failed to hold
7 accountable those that have manipulated and distorted
8 our ability to make clear-headed decisions so we could
9 have prevented this discussion we're having here
10 today.

11 It's not that we should worry about having
12 more environmental assessment worksheets. It's not
13 that we should worry about having more environmental
14 impact statements. That horse is out of the barn. We
15 should be worrying about not having enough
16 environmental assessment worksheets and enough
17 environmental impact statements.

18 The people that have been given the charge of
19 making decisions for us in this society have failed.
20 It is time to listen to the people who have been
21 correct for decades to prevent these problems.

22 So it is the inverse in many respects of what
23 we are being asked today. People will complain it's
24 going to be too much work. We should be moving -- we
25 are at such a rate of overshoot in our atmosphere of

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1 parts per million and parts per billion associated
2 with global warming, that we should be not worrying
3 about if it's 25,000 tons per year, 10,000 tons per
4 year. We should be strict. We should have a zero
5 tolerance of greenhouse gas emissions in the State of
6 Minnesota. That should be our goal because we are so
7 out of balance right now, and we are so conditioned to
8 accept the norm of emissions at this rate, that is one
9 of the biggest problems we're facing right now, and so
10 I ask of you, Judge, to consider what patterns have
11 brought us here and how do we reverse course quickly.

12 Here in Minnesota we have an opportunity to
13 do this, and I won't even get into the deficiencies
14 and renewing permits and all of that, that is neglect,
15 neglect, neglect, and the people who are advancing
16 information to take us from 100 tons per year to
17 100,000 tons per year should be highly questioned, and
18 we should be skeptical of the information they are
19 presenting to us because what has brought us here
20 today is failure, not success, failure, and that is
21 why I really call on you to assess this situation with
22 a clear head. Thank you very much, sir.

23 THE JUDGE: Okay. Thank you. Okay.

24 Next on the list is Shawn Gosiewski, is that right?

25 UNIDENTIFIED MAN: I think he's out

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1 of the room at the moment.

2 THE JUDGE: We can call him later.

3 Actually, we have been going for about an hour and 45
4 minutes, and I normally like to give my court reporter
5 a few minutes of a break, so I think we will do that
6 at this time before I call the next commentator.

7 Thank you. Why don't we take ten minutes and come
8 back at five minutes after 4:00.

9 (At this time a recess was taken from
10 3:55 p.m. to 4:07 p.m.)

11 THE JUDGE: We are going to call the
12 meeting back order again. We had a short break here,
13 and we are back on the record. The last person I
14 called was Sean --

15 MR. GOSIEWSKI: Oh, I'm right here.

16 THE JUDGE: Mr. Gosiewski, please
17 come forward.

18 MR. GOSIEWSKI: Should I sit right
19 at the mic then?

20 THE JUDGE: Yes, please.

21 MR. GOSIEWSKI: Very good.

22 THE JUDGE: Please state your full
23 name and spell your last name for us.

24 MR. GOSIEWSKI: Sean Gosiewski,
25 G-O-S-I-E-W-S-K-I, with the Alliance for

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1 Sustainability. One of the things I am recommending
2 is that as the Pollution Control Agency does an annual
3 tracking of greenhouse gas levels in the State, that
4 that be reported more publicly so that we can know in
5 Minnesota if we are making progress or not.

6 I think that it's really remarkable that our
7 state did adopt a goal of reducing carbon emissions or
8 greenhouse gas equivalents by 80 percent by 2050, and
9 so I am wanting to recommend additional new ways of
10 generating public visibility for the State's goals, as
11 well as the MCCA recommendations.

12 So one of the highlights I would recommend is
13 the new environmental and energy report card that is
14 being developed by the Environmental Quality Board
15 through the executive order of Mark Dayton, which will
16 be having a sub-unit of these success measures for the
17 State that would relate to global warming issues.

18 So that is something that PCA is working on
19 in cooperation with Commerce and Ag to work on these
20 slate of success measures related to energy
21 environment for the State, and they will be having
22 public feedback meetings in November and December, and
23 then a bigger State Congress in February, so that
24 would be a good chance to try to ensure that the
25 public is more aware of how they can plug into

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1 process to achieve the 80 percent reduction by 2050.

2 So those are some of the areas where I would
3 like to see more energy going because we have these
4 recommendations but nothing is really happening, that
5 nobody can tell anything is happening.

6 THE JUDGE: Okay. Thank you. I
7 would like to clarify, you're with the Alliance of
8 Sustainability?

9 MR. GOSIEWSKI: Well, the Alliance
10 for Sustainability.

11 THE JUDGE: For Sustainability.

12 MR. GOSIEWSKI: Our website is
13 AFORS.org. We were part of the initial process to
14 generate the citizen feedback for the 28 stability
15 indicators for the City of Minneapolis.

16 THE JUDGE: Okay. Thank you.

17 MR. TOURVILLE: Your Honor.

18 THE JUDGE: Yes.

19 MR. TOURVILLE: Could we respond to
20 two things that Mr. Pentel mentioned?

21 THE JUDGE: Sure, okay.

22 MR. TOURVILLE: Again, I am Andrew
23 Tourville, the attorney representing MPCA at these
24 proceedings. But I think there may be a little
25 confusion caused about this concept of departure from

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1 achieving this vicious goal of greenhouse gas
2 emissions.

3 Another State agency I would like to have
4 tying in with the State global warming reduction goals
5 is the Met Council because they are right now
6 developing a framework for 2040 for a Twin Cities
7 regional development vision, and they are doing public
8 feedback right now, and they will be coming up with
9 development scenarios for the Twin Cities.

10 So my recommendation would be that we would
11 have a meeting between staff at the State level with
12 MPCA, EQB, along with folks at the Met Council and
13 then other cities that are working on climate
14 reduction plans like the City of Minneapolis right now
15 is working on a Climate Action Plan, so it would be
16 nice to see consistency between the State, the
17 Minneapolis Climate Action Plan, the metro regional
18 vision and plan, and then the State's success measures
19 that are being tracked through the Environmental
20 Coordinating Board.

21 And then, finally, I would like to see the
22 Environmental Coordinating Board be given more power
23 so that it can actually mobilize State agencies that
24 report to the EQB to actually implement the
25 recommendations that were developed through the MCCA

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1 the rule. Because what MPCA is proposing in this
2 proceeding is to adopt the provisions of the temporary
3 rule that has been in effect for two years and will
4 expire, and the permanent rules are needed in order to
5 continue the working of what has been adopted through
6 the temporary rule.

7 The concept of substantial departure in
8 rulemaking has to do with whether the outcome of the
9 rules is substantially different from what was
10 noticed, and the notice was to replace the temporary
11 rules with the permanent rules.

12 So I think we got confused on what a
13 substantial departure is, and the temporary rules I
14 believe have adopted a 100,000 tons per year threshold
15 that came from EPA, and so there is on that score
16 there is not a substantial departure from the
17 temporary rules to the permanent rules.

18 What would be a substantial departure is if
19 something that comes out of these permanent rules is
20 inconsistent, substantially inconsistent with the
21 notice.

22 So probably a little technical, but I don't
23 want to not respond to that particular issue because
24 that is a legal issue.

25 And then there was some discussion, a lot of

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1 discussion about adopting a stricter rule. Again, the
 2 purpose of the hearing though is on whether the
 3 permanent rules are needed and reasonable. Those are
 4 the standards. Different folks can make different
 5 judgments, and will, about what the standards should
 6 be, but this standard is based on EPA's standard, and
 7 MPCA would contend that that is a reasonable standard,
 8 and the rules are needed because as EPA's -- as MPCA's
 9 presentation has been, MPCA believes that there would
 10 be many more permits required from emitters if the EPA
 11 standard is not adopted because of the nature of
 12 greenhouse gases. So I just want to add that.

13 THE JUDGE: Okay. Thank you.

14 Mr. Pentel, I am going to call you on at the end of
 15 the hearing just in deference to the other folks that
 16 haven't had a chance to make a comment.

17 All right. Next up is Kurt Kimber. State
 18 your full name for the record, spell your first and
 19 last name for us.

20 MR. KIMBER: I am Kurt Kimber,
 21 K-I-M-B-E-R, 4811 - 35th Avenue South, Minneapolis. I
 22 am here as a private citizen, and I am also a
 23 volunteer with Minnesota 350.

24 THE JUDGE: Okay. Thank you.

25 MR. KIMBER: So I just want to start

1 facilitated in conjunction with the Minnesota
 2 Pollution Control Agency, I believe that has been
 3 mentioned earlier this afternoon. A couple things
 4 that came out of that was to review approval of an
 5 inventory of historical and forecasted greenhouse gas
 6 emissions in Minnesota and as a basis against which to
 7 gauge priorities and progress.

8 Then there was a recommendation of
 9 cross-cutting issues, policy recommendations, Policy
 10 Number CC-1, greenhouse gas inventories, forecasting,
 11 reporting and registering, that was the
 12 recommendation, and that was unanimously supported by
 13 this group.

14 So I think those two points would be
 15 consistent with a lower threshold of greenhouse -- a
 16 lower threshold for potential to emit greenhouse gases
 17 as part of, you know, building this registry and
 18 tracking these things.

19 Okay. And then I believe you said that there
 20 was three things that you were going to consider, and
 21 one of them was showing the need for this change, and
 22 I would like to just stop and acknowledge and thank
 23 the staff, the PCA staff for answering these questions
 24 at the hearing today.

25 And I think what I am hearing the Agency

1 out with making the case for the urgency about dealing
 2 with greenhouse gases. Probably a lot of people in
 3 this room know that the globe is warming most at the
 4 poles. We have got record low sea ice today. I think
 5 probably most people in this room are going to witness
 6 the day that we have an ice-free Artic.

7 There is scientists that have estimated the
 8 amount of carbon that is sequestered in the permafrost
 9 in, you know, the Northern Hemisphere, and that amount
 10 of carbon has been estimated to be two and a half
 11 times the amount of carbon that is in the atmosphere
 12 right at this moment.

13 So the danger, the fear, the reality is that
 14 we are on the cusp of runaway climate change, and
 15 there is a tipping point that once CO2 levels get to a
 16 certain point it doesn't matter if we permit
 17 everything in the world, whatever people do is going
 18 to be just crushed by nature's response, and so there
 19 is urgency to this work, that's why I am here today.

20 Several people have already made the point
 21 about the inconsistency of adopting the -- basically
 22 increasing the threshold permitting limits by 1,000
 23 times in juxtaposition to the Next Generation Energy
 24 Act. As part of the Next Generation Energy Act, the
 25 Minnesota Climate Change Advisory Group was

1 propose is that they have basically two choices, they
 2 can either accept the Federal EPA limits of
 3 100,000 tons or go back to 100 tons per year and then
 4 have to permit 130,000, approximately 130,000 sources.
 5 I believe that it's been stated before that it's okay
 6 for the PCA to have a threshold that is lower than the
 7 EPA standard. I think that has been stated by the
 8 staff here to.

9 So I would propose that there is not this
 10 discotomy that is being presented, but there is the
 11 opportunity for let's say to determine what the level
 12 would be such that 99 percent of the State's sources
 13 would be captured, and set the threshold at that
 14 point. I am just going to make a guess, you know, if
 15 somewhere between 46 and 120 of the sources represent
 16 approximately 2/3 of the State's emissions, I am just
 17 going to guess that it's probably like 1,000 of them
 18 or 1,500 of the sources would cover 99 percent of the
 19 State's emissions, and so I think that would be, you
 20 know, kind of a bang for the buck and an effective,
 21 you know, response to this rule change.

22 Then maybe I will just -- so, again, I don't
 23 think that the -- in my take, I don't think that the
 24 Agency has shown that they need to go between these
 25 two. That there is, you know, other solutions that

1 could give us, you know, very high performance for a
2 reasonable amount of effort.

3 And then maybe the last thing I will say is
4 that greenhouse gases are probably the most important
5 thing that the Agency is going to regulate; and if we
6 don't get our greenhouse gas emissions under control,
7 not very many other things are going to matter. Okay.
8 It is a privilege to be here. Thank you.

9 THE JUDGE: I would like to ask a
10 follow-up question of staff, and Ms. Conti in
11 particular, if it's appropriate. If I understand your
12 proposal, and based on the testimony we have heard so
13 far, the EPA is attempting to capture 67 percent of
14 the sources, and they're doing that on a national
15 level. If I understand your remarks, Mr. Kimber,
16 you're saying that rather than using a national view
17 of the sources, look at Minnesota's sources and look
18 at a number that would reflect 67 percent of the
19 sources in Minnesota, is that what you're saying, or
20 correct me?

21 MR. KIMBER: No, not quite.

22 THE JUDGE: Okay.

23 MR. KIMBER: So let's just say if we
24 set the threshold at 100,000, so 100,000, so for
25 sources that emit 100,000 tons of the CO2 equivalents

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1 other commenters and writers up until that
2 September 14th date that I discussed earlier, and then
3 at the end there will be a five-day working period in
4 which anyone and everyone can comment on the most
5 recent submissions up to September 14th. So just so
6 the folks know how this is going to play out, and so
7 there will be a final rebuttal period that is going to
8 end on September 26th.

9 To extent that the Agency is prepared to
10 address that now, they may do so, otherwise we will
11 see how it plays out in writing, whatever.

12 MS. CONTI: Your Honor, I would make
13 two clarifications. The first clarification is again
14 regarding the issue of what the permit threshold is
15 base on. As I mentioned earlier, it's based on a
16 worst case emissions scenario. So under this worst
17 case emissions scenario is where we get that high
18 number of possible permits that may need to be issued.

19 The emissions inventory, which is the
20 information that Mr. Muller had presented, are
21 facilities' actual emissions. So that it may be true
22 that a relatively small number of facilities have
23 actual emissions above, for example, 25,000 tons per
24 year, the larger number of facilities would have
25 potential emissions, this worst case scenario, at the

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1 annually or have the potential to emit that, if we set
2 the threshold at that, then we capture probably
3 67 percent of the CO2 generated by stationary sources.

4 THE JUDGE: Okay.

5 MR. KIMBER: Now let's say we drop
6 it down to 50,000 tons, now we capture let's say
7 80 percent of the stationary sources. And then I
8 think that the Agency could do a determination where
9 they could find the number that would represent that
10 would capture 99 percent of the sources, the sources
11 responsible for 99 percent of the emissions in the
12 State. I am just going to guess that that number is
13 going to be, you know, somewhere around 1,000. Not
14 130,000, you know, 1,000.

15 If they are permitting, you know, somewhere
16 around 100 now, you know, I think that might be a
17 reasonable thing to do.

18 THE JUDGE: All right. Thank you
19 for that clarification. Did you have a response,
20 Ms. Conti, to that at this point? I know that the
21 Agency is going to have a response -- excuse me, an
22 opportunity to respond to a lot of the issues and
23 proposals that folks are raising today, and so they
24 can do that in writing in that initial period that we
25 discussed. Then there is going to be another wave by

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1 higher level, and that is what the permitting decision
2 would be based on.

3 We can estimate emissions for different
4 scenarios, but without a facility giving us
5 information about their equipment, it would be very
6 difficult to have a more refined estimate.

7 THE JUDGE: So basically we're
8 talking about apples and oranges, right, there is two
9 standards? One are the actuals that people report
10 pursuant to law, and then the standards that we're
11 talking about today are the worst case scenario
12 standards, and if they ran at 365 days a year at full
13 capacity 24/7, this is the potential that they would
14 run up to; is that correct?

15 MS. CONTI: That is correct.

16 THE JUDGE: Okay.

17 MS. CONTI: As I mentioned earlier,
18 the US EPA did start out with a lower permit threshold
19 in their proposed national rules. The final rules
20 they presented a higher threshold, and that is what
21 most states and local units of government are
22 implementing. There are a few states who have not
23 been able to or do not agree to implement the Federal
24 rules, and in those cases US EPA is administering
25 those greenhouse gas permits.

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1 THE JUDGE: Okay. Thank you for
2 that clarification. Mr. Kimber, anything further?
3 MR. KIMBER: Yes, thank you, for
4 that opportunity, but, again, the Minnesota Pollution
5 Control Agency has I believe the ability to choose to
6 set the threshold at a lower level, and I would say
7 that that would be a reasonable thing to do. We
8 talked about reasonableness, so I don't think the
9 Agency has shown the need to adopt the Federal
10 standards of 100,000 tons per year, and I think it
11 would be reasonable to choose a lower threshold that
12 would capture -- in an efficient manner it would
13 capture, you know, 99 percent of the State's emitters,
14 and I would ask the Agency to consider that.
15 THE JUDGE: Okay.
16 MR. KIMBER: I would ask you to
17 consider that in your report.
18 THE JUDGE: Thank you.
19 MR. KIMBER: Thank you.
20 THE JUDGE: Okay. The next person
21 is Jessica Tatro.
22 UNIDENTIFIED MAN: She had to leave,
23 so she won't be testifying.
24 THE JUDGE: She is aware that she
25 could submit something in writing then?

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1 UNIDENTIFIED MAN: Yes.
2 THE JUDGE: Okay. And then Bob
3 Tammen. Please state your full name, and spell your
4 name for the record.
5 MR. TAMMEN: Thank you, Your Honor.
6 I am Bob Tammen, T-A-M-M-E-N, Soudan, Minnesota, an
7 old mining town up in the Iron Range. I am a retired
8 electrician. My wife Pat taught for over 30 years as
9 an Ely Elementary teacher.
10 I'd just like to make a general comment that
11 I believe it's reasonable to vigorously regulate
12 greenhouse gases, and I say that because of my work
13 experience. In my late teens I worked in the oil
14 fields in Wyoming drilling oil wells. My middle
15 years, I spent many years working in the mines.
16 Mining is boom and bust, so in my later years before
17 my retirement I worked on the wind farms, and my best
18 paychecks came from the wind farms. I like clean
19 energy. What corporations call the cost of
20 compliance, I call a paycheck.
21 I believe that creating a healthy environment
22 will create a healthy economy, and so with that I
23 conclude regulate greenhouse gases enthusiastically.
24 Thank you.
25 THE JUDGE: Thank you. Okay. It's

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1 4:35, and we have run through the folks that --
2 MS. OVERLAND: No.
3 THE JUDGE: -- that have asked to
4 speak.
5 MS. OVERLAND: I was before Alan.
6 THE JUDGE: Who are you?
7 MS. OVERLAND: Carol Overland.
8 THE JUDGE: Carol Overland, did you
9 make a request to speak?
10 MS. OVERLAND: Yes, it's right on
11 there. It was right before Alan.
12 THE JUDGE: Alan, what is the last
13 name, Alan what?
14 MS. OVERLAND: Alan Muller, I put
15 his name on the sheet, and mine is before his. It was
16 on the second sheet that was up there, and I think I
17 was the first line on the second sheet.
18 THE JUDGE: You know what, that
19 ended up becoming the last list, my apologies. Okay,
20 go ahead, you have -- yeah, we didn't organize them
21 back as Page 1 and 2 and 3, so my apologies for that.
22 MS. OVERLAND: Not a problem.
23 THE JUDGE: Go ahead. State your
24 full name again.
25 MS. OVERLAND: Sure. My name is

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1 Carol Overland, I am an attorney. My company is
2 Legalectric, L-E-G-A-L-E-C-T-R-I-C dot O-R-G, and I
3 work primarily before the Public Utilities Commission,
4 but have a lot of agency experience.
5 Looking around the room today, there is
6 hardly anyone here. Why is that? I am very concerned
7 because I think it's a function of improper notice.
8 There are a lot of people who requested a hearing, and
9 there are very few people here, and there is certainly
10 very few of the usual suspects you would to see at a
11 greenhouse gas hearing. Where are they? That is
12 really unusual.
13 The MPCA did admit that the notice didn't
14 comply, and the meeting notice was August 15th. It's
15 supposed to be under Minn Stat 14.14, Subdivision 18
16 30 days before the hearing, and that is not.
17 So I would ask that this hearing be
18 re-noticed and held properly with proper notice, and
19 that is also under Minn Stat. 14.50, Subdivision 2,
20 the ALJ is supposed to conduct only hearings that have
21 had proper notice.
22 So we do have a problem here, and I think
23 that this problem is reflected in how few people are
24 here. I expected standing room only and it's not.
25 I also ask, which is something I requested

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1 too in my initial request for a hearing on this, that
2 there be an evening session because people have to
3 work and they can't be here, and there is a lot of
4 people in Minnesota who are concerned about greenhouse
5 gases and the regulation of them and they are not
6 here. And how many of them would be here if we had a
7 hearing in the evening? That is when most people are
8 able to go. Not many people are as fortunate as I am,
9 being self-employed and show up here.

10 Also I wanted to be clear I am making these
11 comments as an individual and not as representing any
12 party.

13 But very few people can just take time off to
14 come to a hearing like this, so I ask that this be
15 re-noticed, held properly, and that there be an
16 evening session so people can join in.

17 Also I want to note that under 14.14,
18 Subdivision 2a questioning is allowed. The ALJ shall
19 allow questioning of Agency reps or witnesses. We
20 need to do that. We need to get the information in
21 the record, and that is really the only way we have to
22 do it. I will have a few questions, not many, but a
23 few.

24 First, the 2007 laws, as Mr. Muller noted, it
25 had strong bipartisan support, and it requires

1 what I see happening here.

2 We need regulation somewhere between that 100
3 and 120,000 number of entities emitting greenhouse
4 gas, and, you know, no, we shouldn't be putting an
5 unreasonable burden on the Agency, but the Agency
6 already has a problem in not having the ability to do
7 its job, not having the funds to have staff on
8 projects, and we need to find a middle ground, and we
9 shouldn't be basing our rulemaking on not having the
10 resource and staff to do the job. That is just not
11 right. That is not what we're here for today.

12 THE JUDGE: Now, is that a question,
13 or is that a rhetorical question?

14 MS. OVERLAND: That is a statement,
15 but my question to them --

16 THE JUDGE: I am ready to pose that
17 question to them if that is your question.

18 MS. OVERLAND: Right, and I have a
19 feeling they are not going to be able to throw out a
20 number, but I think that is something that they should
21 answer in the record on this is what kind of budget do
22 you need to do the job because I want to see that you
23 have the budget. I want to see that you are able to
24 do your job. I have seen a lot of people in the MPCA,
25 and I don't have a lot of experience with the MPCA,

1 cutting -- it has a goal of cutting greenhouse gas
2 emissions by 15 percent by 2015, 80 percent by 2050.
3 It's clear that the intent of this rule is not to
4 implement the 2007 Next Generation Energy Act, but it
5 is reasonable and necessary to reduce the threshold,
6 and I would expect to see that from this rule.

7 On Page 11 of the proposed rule, Exhibit 3 --
8 no, it's the SONAR, isn't it, just a second. Page 11
9 of the SONAR, which is Exhibit 3, and that was
10 referenced earlier about offering regulatory relief to
11 small sources. Just above that in Paragraph 5 it
12 notes the current budget constraints limit the MPCA's
13 ability to hire new staff. A large number of new
14 greenhouse gas permit applications could result in a
15 backlog extremely difficult to overcome. Right now we
16 have got serious problems with backlogs. We do have
17 outstanding permits that have been expired for how
18 many years and nothing is happening on them and
19 nothing is going to happen any time soon.

20 The question I have for staff is what kind of
21 budgetary increase, what kind of support do you need
22 here to be able to do the job because it's not
23 happening? We need that to happen in Minnesota. We
24 need the funding for the MPCA because essentially
25 without it it's deregulation de facto, and that is

1 but I have seen a lot of people that care about what
2 they do and are really struggling to get it done with
3 the workload, as it is with the PUC or the Department
4 of Commerce, it's out of control, as it is at the
5 Office of Administrative Hearings where staff has been
6 gutted.

7 We can't operate that way, and we need the
8 funding, so I am hoping that in their reply comments
9 they will be able to address what kind of funding
10 level is needed to do a reasonable and necessary
11 review and permitting if necessary beyond reporting,
12 permitting if necessary of these greenhouse gases.
13 It's a long-term question as a question for later.

14 For Exhibit 2, moving on to the actual
15 proposed rule, for example, everywhere it says
16 100,000, like on Page 4, Line 4.19, Page 9, Line 9.17,
17 anywhere it says that 100,000, I don't think that that
18 is the necessary and reasonable. I think it's
19 necessary and reasonable to lower the threshold, so
20 each point where it says that I think that should be
21 lowered to at least 25,000 tons or less.

22 On Page 13 to 14 there is an exclusion of
23 biogenic CO2, and it seems to be based on mirroring
24 the Federal language, but the State can be more
25 stringent, so what I would like to know is what is the

1 basis for that exclusion, or is it just that it's to
 2 mirror the Federal?
 3 THE JUDGE: Ms. Conti. Please refer
 4 to the citation that you made so I can follow along
 5 with the discussion.
 6 MS. OVERLAND: It's Page 13 and
 7 going into Page 14, and the rule section is 7007.0325.
 8 THE JUDGE: Thank you.
 9 MS. CONTI: Your Honor, the MPCA has
 10 opted to include the Federal biogenic carbon dioxide
 11 exclusion in the calculation for potential to emit.
 12 This mirrors the Federal EPA, and that was the
 13 Agency's intent.
 14 It's true that other states are not
 15 implementing this exclusion. However, when I have
 16 spoken with other states, it wasn't necessarily
 17 because they had a specific concern regarding biogenic
 18 CO2 versus other CO2 sources. For some states it was
 19 merely an administrative issue that they could not
 20 undertake a timely rulemaking for the amount of time
 21 the temporary exclusion would be in place.
 22 Because we had these rules open, it was
 23 timely for Minnesota to make this change. If that had
 24 not been the case, we may have been one of the states
 25 that did not follow EPA on that exclusion.

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1 list of six pollutants which the US EPA has defined as
 2 greenhouse gases for the purposes of the permitting
 3 rule. These are the same pollutants that they have
 4 included in greenhouse gas reporting regulations.
 5 Nitrous oxide is the specific chemical that has a
 6 greenhouse gas impact. Oxides of nitrogen are a
 7 regulated pollutant under other parts of the Clean Air
 8 Act and EPA regulations, and they have other rules
 9 that apply for oxides of nitrogen.
 10 THE JUDGE: So your answer is that
 11 this is appropriately included in this rulemaking?
 12 MS. CONTI: Yes, is the correct
 13 pollutant.
 14 THE JUDGE: Okay.
 15 MS. OVERLAND: Then at the bottom of
 16 Page 43 where it says large capital N, capital O,
 17 little X, you're saying that is nitrous oxide.
 18 MS. CONTI: No?
 19 MS. OVERLAND: No?
 20 MS. CONTI: Oxides of nitrogen is
 21 represented in writing as N-O small x. MPCA already
 22 has portions of its permit rule that address oxides of
 23 nitrogen. We have written out nitrous oxide to
 24 differentiate the compound that is regulated as a
 25 greenhouse gas separately from other nitrous

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1 MS. OVERLAND: Okay. Thank you.
 2 And as a comment I would like to say that there is a
 3 myth about biogenic carbon dioxide that, for example,
 4 is a biomass because it's a biomass it doesn't then
 5 increase carbon dioxide, the carbon dioxide emissions,
 6 it balances out; but that is no true because of the
 7 length of time it takes to produce the biomass and the
 8 length time that it takes it burn it, it's gone, and
 9 so that doesn't work out. That is a myth. I think
 10 that that entire section should just be crossed out.
 11 From Page 13, Line 13.12 to Page 14, 14.11, cross it
 12 off.
 13 Going again to the actual rule proposed,
 14 Exhibit 2, Page 40 through 42, I note that it says
 15 nitrous oxide, which I don't think we are talking
 16 about laughing gas here, so should that be oxides of
 17 nitrogen or nitrogen oxide? That is a question I
 18 would like answered yes or no.
 19 THE JUDGE: Where is that citation?
 20 MS. OVERLAND: That is from Page 40
 21 at the bottom going all way through to 42, Line 13,
 22 and then there is reference to NOx on Page 43 at
 23 Line 43.27, so should that be nitrogens of oxide or
 24 nitrogen oxide or whatever?
 25 MS. CONTI: Your Honor, there are a

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1 compounds.
 2 MS. OVERLAND: Okay. Thank you for
 3 that clarification. I appreciate that. And then
 4 regarding the rulemaking, earlier, and it sounded as
 5 if his name was Mr. Coal Ash, but I don't think that
 6 is right. Is it Kohlasch?
 7 MS. CONTI: That is how it's
 8 pronounced.
 9 THE JUDGE: That is how it's
 10 pronounced. He stated that there was not any
 11 rulemaking at the PUC or Commerce, correct, regarding
 12 the 2007 Next Generation Energy Act?
 13 MR. KOHLASCH: No, that is not what
 14 my statement was. It was that for the PCA.
 15 MS. OVERLAND: For the PCA there was
 16 no rulemaking. Are you saying then that there is
 17 rulemaking at the PUC and Commerce regarding this?
 18 MR. KOHLASCH: I would have to
 19 review the rule, the statute, but the PUC has
 20 specific -- I should come up.
 21 Thank you, Your Honor. To answer the first
 22 question again so everybody can hear that: No, my
 23 statement was not that the PUC did not have rulemaking
 24 authority granted to it or directed to it in the Next
 25 Generation Energy Act. My statement was that the

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1 Pollution Control Agency was not directed to adopt any
 2 rules under the Next Generation Energy Act.
 3 Regarding the question of does the Public
 4 Utilities Commission have rulemaking directed to it
 5 under the Next Generation Energy Act? I don't want to
 6 answer that right now without reviewing the actual
 7 statute because that would be applied to the Public
 8 Utilities Commission and I don't want to speak on
 9 their behalf.
 10 MS. OVERLAND: And then while you're
 11 still here, is this the only rule related to
 12 greenhouse gas that under the MPCA?
 13 MR. KOHLASCH: Your Honor, yes, as
 14 far as I can recall, this is the only greenhouse gas
 15 rule that the Pollution Control Agency has undertaken
 16 at this point in time. Again, it was prompted and
 17 driven by the changes at this Federal level to
 18 regulate greenhouse gases as an air pollutant and to
 19 establish permitting thresholds for the permitting
 20 programs that individual states operate under the
 21 Clean Air Act.
 22 MR. COOLEY: Supplementing the
 23 temporary rule.
 24 MR. KOHLASCH: And it supplements
 25 the temporary rules that were adopted in 2011 and

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1 makes those permanent so that the Pollution Control
 2 Agency can maintain its authority to issue permits
 3 under the Clean Air Act.
 4 MS. OVERLAND: Okay. Thank you.
 5 That is all I have. Nothing further.
 6 THE JUDGE: Can I ask a question, I
 7 did have a question that was raised earlier by one of
 8 the other commentators. What was the question? I
 9 believe it related to -- I believe it was a question
 10 that was raised about using other thresholds -- I will
 11 have to think about that, okay, it's not coming to
 12 me now, but I was left with a question.
 13 MS. HEMPHILL: Your Honor, I
 14 remember your saying -- I am sorry, Stephanie
 15 Hemphill, H-E-M-P-H-I-L-L. You said you would ask the
 16 Agency, if she didn't ask, and that was about what
 17 resources they would need to do a job. Was that it?
 18 THE JUDGE: No, it wasn't something
 19 she raised. It was another commentator.
 20 MS. HEMPHILL: Sorry.
 21 THE JUDGE: Let me see if it comes
 22 back to us. Okay. Thank you for your comments. It
 23 was a question raised by the response of the Agency by
 24 counsel, and I was going to afford you the
 25 opportunity, Mr. Pentel, to respond to that.

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1 MR. PENTEL: Hello. Ken Pentel with
 2 the Ecology Democracy Network, and Mr. Tourville had
 3 brought up a point associated with the temporary
 4 relating to the statement I had made earlier that the
 5 requirements include assurances that the proposed
 6 rules are necessary and reasonable, and that any
 7 modification that the Agency made after the proposed
 8 rules are initiated do not result in the rules being
 9 substantially different from what the Agency
 10 originally proposed.
 11 So what I am hearing from Mr. Tourville was
 12 the conflating or seemingly a rationale to conflate
 13 the word temporary with the word permanent. Temporary
 14 is basically just serving for a limited time. It is
 15 not permanent. That is generally the definition of
 16 temporary. Permanent is basically everlasting, it's
 17 indefinite. So there are two different things
 18 happening here. Last year --
 19 THE JUDGE: It was actually two
 20 years ago.
 21 MR. PENTEL: Two years ago temporary
 22 was established, but it was not permanent. Now we are
 23 talking about permanent. That is a bigger thing.
 24 THE JUDGE: Okay.
 25 MR. PENTEL: That is more important.

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1 THE JUDGE: Let me tackle this:
 2 What he is talking about there is that only pertaining
 3 to the rules that are being proposed now becoming
 4 permanent, and then there are particular amendments to
 5 those rules. Okay. When the Agency is required to
 6 put out a notice to the public announcing that there
 7 are going to be changes to the rules, what we're
 8 talking about being a significant departure from that
 9 is that if they are proposing this, but they end up
 10 passing something else totally different, that is a
 11 significant departure from the notice that has been
 12 given to the public.
 13 So it doesn't relate back to the temporary
 14 rules that became law two years ago. We are not
 15 talking about that. What we're talking about now are
 16 is the notice that was just given recently, and I
 17 guess that is one question I was going to bring back
 18 to you that was raised by Counsel here as to the
 19 notice issue, so I would like to you respond to that,
 20 but that is a separate question.
 21 The point is is that in the notice that has
 22 been given for this proceeding relating to making the
 23 temporary rules now permanent, if something comes out
 24 of this proceeding that is going to be totally
 25 different than what was announced and notified, then I

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1 can find as a matter of law, and that is why he said
 2 it's a legal question, I can find as a matter of law
 3 that they have departed from what they said they were
 4 going to do and have done something else, and that
 5 reasonable people that have received these notices and
 6 expected that they would happen as proposed but now
 7 find out later that they haven't happened as proposed,
 8 that they have violated their notice, and I find as a
 9 matter of law that they have departed from what they
 10 said they were going to do, that the rules that they
 11 are actually proposing are significantly different and
 12 the people that might have been interested to
 13 challenge what is being enacted into rule didn't get
 14 that opportunity to challenge that because they told
 15 me it was going to be this rule and instead they did
 16 that. Do you see what I mean?

17 MR. PENTEL: Right.

18 THE JUDGE: That is kind of a long
 19 way of an explanation, but that is really the
 20 challenge that he was referring to, and so I think
 21 it's a little different than what --

22 MR. PENTEL: So the differentiation
 23 between what we have been using as temporary and what
 24 we are talking about having as permanent is not that
 25 different? You're talking about there is not a big

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1 the dynamic of what would be considered a permanent
 2 rule, so I would just say -- I would offer that as
 3 part of the thinking as you go through the process of
 4 putting this case together, what has -- what was
 5 temporary was considered temporary.

6 THE JUDGE: Okay.

7 MR. PENTEL: And facts have changed
 8 during that period.

9 THE JUDGE: Right, and I am going to
 10 need some help with that. I mean, yes, things have
 11 changed, but why should we not use the standards
 12 employed by what is being proposed? Do you see what I
 13 am saying? Give me a finer point on this and comment
 14 to us and we will take that into consideration.

15 MR. PENTEL: Okay. And
 16 Mr. Tourville, the second point you made, what was
 17 that?

18 MS. CONTI: It was about the
 19 reasonableness of the rule.

20 MR. PENTEL: Okay. I see. I guess
 21 once again it comes back to the facts based upon the
 22 facts we have now in 2012 is this a reasonable
 23 response, and I would contend it's completely inverse
 24 to reasonableness at this point based upon the facts
 25 we are handed. So that would be my input at this

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1 deviation between the two?

2 THE JUDGE: There is not a big
 3 deviation from what they proposed in their notice for
 4 this hearing --

5 MR. PENTEL: Right.

6 THE JUDGE: -- as to what will
 7 actually result if these rules are passed. That what
 8 they told you they were going to do, they actually
 9 did.

10 MR. PENTEL: Okay.

11 THE JUDGE: Now, what we're
 12 disagreeing here or the disagreement I hear today is
 13 that there can be other reasonable standards employed
 14 rather than the ones that they are adopting from the
 15 Federal regulations that become Minnesota law on a
 16 temporary basis, and that seems to be what the bone of
 17 contention is here, not that they are proposing one
 18 thing and will end up with something totally
 19 different.

20 MR. PENTEL: Right. And what I
 21 would just say is during the period of the temporary
 22 rule facts have changed, facts have changed.

23 THE JUDGE: Okay. And I would like
 24 you --

25 MR. PENTEL: And that does change

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1 point. Thank you.

2 THE JUDGE: Thank you.

3 Mr. Tourville, I am going to ask you to respond to the
 4 notice issue that was raised by Ms. Overland. If I
 5 understood her characterization, she indicated that
 6 parties have less than 30 days.

7 MR. TOURVILLE: So Andrew Tourville
 8 for the MPCA. We are referring to Exhibit 7 in the
 9 binder of documents, and Exhibit 7 is the certificate
 10 of giving additional notice, and it refers to the fact
 11 that the notice was sent on June 9, 2012, which was 32
 12 days before the end of the comment period.

13 We're dealing with statutory requirements,
 14 and we are also dealing with the requirement of the
 15 OAH rules about when the notice must be mailed. The
 16 OAH rules state that the notice is mailed 33 days
 17 before the end of the comment period or before the
 18 hearing. I hope I am quoting that right.

19 MS. OVERLAND: Can you cite that,
 20 please.

21 MR. TOURVILLE: Excuse me?

22 MS. OVERLAND: Cite that, please,
 23 what is the citation on that because I am looking at
 24 14.14.

25 MR. TOURVILLE: I am referring to --

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1 I have already referred to the wrong exhibit. It's
2 Exhibit 6.

3 THE JUDGE: Okay.

4 MR. TOURVILLE: Exhibit 6 is the
5 certificate of mailing the notice to the rulemaking
6 mailing list, so that certificate says, from Nathan
7 Cooley, it says that he mailed the notice on July 9th.
8 The end of the comment period was stated as
9 August 10th. If you count the days by not counting
10 July 9th and including August 10th, which is the rule
11 about how to count, that is 32 days.

12 The notice also says when the hearing is.
13 The hearing is August 30th. There is more, many more
14 days than 30 days or 33 days.

15 So the part of the notice -- it's a dual
16 notice that is designed to handle the situation where
17 there might be a hearing or there might not be a
18 hearing. So the part about today's hearing, there is
19 more than 33 days. It complies with the OAH rule, and
20 it also complies with the statute.

21 What I brought up was that the notice was not
22 33 days before the end of the comment period.

23 But as a practical matter, the notice got to
24 folks because it was e-mailed to them, and it got to
25 them the same day that was sent out, so that is 32

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1 days. So there was 32 days before the end of the
2 comment period for the giving of the notice, and the
3 notice went to all 1,388 people, so that is more
4 than -- so that includes all of the people who were
5 specifically interested in this rule, and it also went
6 to the folks who indicated that they were interested
7 in MPCA's rulemaking in general and they were also
8 interested in air issues.

9 MR. MUELLER: When was the public
10 notified?

11 MS. OVERLAND: That there would be a
12 hearing and where it would be and when?

13 MR. TOURVILLE: The public is
14 notified -- well, the notice -- all right. So the
15 complication is that there is a comment period. The
16 comment period invites comments or requests for
17 hearing. The comment period ended on August 10th. So
18 by August 10th if there were not 25 requests for
19 hearing, there wouldn't be a hearing. There wouldn't
20 have been any hearing.

21 There were more than 25 requests for hearing,
22 so then there is a notice that goes out that there
23 will be a hearing, but the date of the hearing was
24 given in the original notice on July 9th, and it's in
25 the State Register, and that was also July 9th.

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1 The statute requires 30-days notice, so there
2 is more than 30-days notice from the State Register
3 publication.

4 The only issue is the application of the OAH
5 rules requiring 33 days before the end of the comment
6 period. Since the rule is based on the statute, the
7 need for 30-days notice, and it's an old rule and it
8 still contemplates mail notice and the three-day rule
9 that we have followed as lawyers for years and years
10 and years. Now that we have instant messaging and
11 electronic messaging, the notice got to people before
12 the 30 days.

13 So MPCA is hoping that this was a harmless
14 error, so that is what I was trying to convey.

15 THE JUDGE: All right. And then to
16 follow-up on another concern, the question was raised
17 that the expectation was that there would have been
18 more people here. Are the public interest groups on
19 that mailing list as well as, the e-mail list of 3,000
20 folks?

21 MR. COOLEY: It's self-subscribing.

22 MR. TOURVILLE: It's a
23 self-subscribing list, so it depends on whether those
24 organizations would register their names to get
25 notice.

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1 THE JUDGE: So staff here is not
2 aware or not of who is on that list?

3 MR. TOURVILLE: The list is attached
4 to the certificate. They're e-mail addresses so you
5 can't always read what they are. I'm assuming that
6 there would be some organizations. I did look at the
7 list a little bit, it isn't just individuals. There
8 are businesses or what look like organizations. There
9 are government folks on the list even from other
10 states. Iowa has several people on the list.

11 So it's hard to know who is moved to sign up
12 to get a notice, but we do rely on the State Register
13 notice, which I would hope folks that are interested,
14 organizations that are interested, I reference
15 organizations in particular in this case is the issue,
16 that they would -- I believe they follow, they look at
17 the State Register, but there is no way to guarantee.

18 MR. COOLEY: I will just say, Nathan
19 Cooley, MPCA, and I am the rule coordinator for this
20 rulemaking, that in our previous system we had what we
21 call an Agency M list, which is the list of people who
22 had asked to be notified when there was a rulemaking,
23 and there were approximately 400 people on that list.

24 In the last year or so we have migrated to a
25 system called Gov Delivery. We mailed to all the

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1 people that were on that M list and said we're
2 switching to Gov Delivery, and if you're interested in
3 any topic, please go there and register yourself so
4 that you will continue to get notices.

5 So then we -- and we went from about 400
6 people on that list to -- well, there was 702 people
7 registered under this particular greenhouse gas rules
8 list, so we greatly expanded the number of people we
9 are reaching.

10 We actually sent to multiple several
11 different lists. In addition to the greenhouse gas
12 rule list, we have included general rulemaking
13 interests and air quality, general air quality issues
14 for the initial notice, so we ended up reaching about
15 1,380 some odd people.

16 Some of those end with a dot org, you know, I
17 could go through the list and try to find some
18 examples for you, but I think I am pretty sure we are
19 pretty well covered. I'm pretty sure the
20 organizations are on top of that.

21 THE JUDGE: Thank you.
22 Ms. Overland.

23 MS. OVERLAND: My question would be
24 there was this greenhouse gas group that they had
25 referred to earlier that came out with the report and

1 those people.

2 If I might respond, we found a list of people
3 who indicated they were "interested parties" from the
4 original temporary rulemaking, and as part of my
5 effort to make supplemental or additional notice I did
6 e-mail to that group. I can't say whether -- I didn't
7 look, and I can't say right now whether they were also
8 self-subscribed to the Gov Delivery list.

9 THE JUDGE: Okay. All right. Final
10 comments then?

11 MR. MUELLER: Just on this point,
12 the PCA has a public notice list which appears close
13 to the front page of the Agency's main website, that
14 there one looks for permitting actions, public comment
15 periods and so on, that is what I rely upon if I want
16 to look to see what is going on. Was there a 30-day
17 notice on that, that means of communication?

18 MR. COOLEY: Nathan Cooley. Yes,
19 Mr. Muller, we published on our notices page this
20 notice for this rulemaking describing the scope of our
21 intent to adopt these rules and the scope of our need
22 to adopt these rules, and then we included in that a
23 link to our SONAR and to our notice and to the
24 proposed rules.

25 The way that that notice web page works for

1 there was a task force and groups meeting regularly,
2 and it seems like that is a group that would have the
3 e-mails of people that should have been notified of
4 this, and I would wonder what the overlap is there. I
5 would think that that would be a logical place to
6 send -- you know, e-mail doesn't cost anything, and
7 the entities that held these meetings would have that
8 information, and it could easily have been sent out to
9 those people.

10 THE JUDGE: So are you asking
11 whether that happened?

12 MS. OVERLAND: Right. Will
13 Exhibit 7 be available online, I could look at that
14 and get a rough idea?

15 THE JUDGE: Yes, I believe so. I
16 believe we will put -- try to get everything online.
17 I may be speaking out of school here, but I believe
18 those documents -- does the PCA have those documents
19 online?

20 MR. COOLEY: We have a lot of the
21 documents for this rulemaking online. I'm not sure
22 that we have everything. Like the list of people who
23 we sent Gov Delivery to, I don't think I have posted
24 all of that. We posted a list of the people who
25 commented or requested a hearing, so we posted all of

1 our Agency is that that material is up there during
2 that actual live notice period.

3 MR. MUELLER: Right.

4 MR. COOLEY: And then subsequent to
5 that it goes to an archive page, and it is still on
6 there as an archive at this point.

7 MR. MUELLER: When did it go up?

8 MR. COOLEY: On July 9th, the start
9 of the notice period, and it stayed on through
10 August 10th, the last day of that notice period.

11 MR. MUELLER: Okay. And do you do
12 newspaper publication anymore?

13 MR. TOURVILLE: I am in the wrong
14 spot.

15 MR. COOLEY: Mr. Muller asks whether
16 we do newspaper publication. The legal requirement is
17 that we publish in the State Register, and that is
18 where we published for that venue of legal notice. We
19 also provided it to our self-subscribing Gov Delivery
20 e-mail list for people.

21 MR. MUELLER: Just one more, I am
22 personally satisfied that there was 30-days notice --

23 MS. OVERLAND: No.

24 MR. MUELLER: -- on your public
25 notice list. I don't know how other people would feel

1 like that, but I have noticed that in some cases the
2 PCA issues a press release regarding something that is
3 happening and in other cases it does not. Do you know
4 how that is decided and whether there is a press
5 release on this one? I am asking because it's
6 obviously a matter of substantial public interest or
7 it would seem to be from what people have said today.

8 MR. COOLEY: I am going to defer.

9 MS. CONTI: Your Honor, this is
10 Barbara Conti again. While I am not familiar with all
11 Agency programs regarding using a press release, there
12 are some programs where the procedural rules require
13 that. For example, environmental review regulations
14 require a press release. The rule regulations require
15 the State Register notice.

16 The Agency has an information office where
17 items can be elevated to be assessed for the need for
18 a press release. I think in this case we did not
19 proceed with that request to them because the
20 temporary rules had already been in place a year and a
21 half at that point.

22 THE JUDGE: Okay.

23 MR. MUELLER: Thank you.

24 THE JUDGE: All right. I have got
25 one envelope from a person who wants to receive notice

1 confusion, let me make it clear. It's September 19th
2 and 26th.

3 MS. OVERLAND: Got it. Thank you.

4 THE JUDGE: Thank you. Have a good
5 evening.

6 (Whereupon, at 5:12 p.m., Thursday,
7 August 30, 2012 the Rulemaking Hearing
8 was adjourned.)
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1 of our report. So if you want that, please fill out
2 an envelope and I will pick it up on my way out the
3 door so that once we release my report and
4 recommendation that you will get a notice as to how to
5 get access to that.

6 MS. OVERLAND: Will that be on the
7 OAH website?

8 THE JUDGE: Yes, it will probably be
9 the day of or the day after I release the report it
10 will be posted on our website as well, so it's going
11 to be available.

12 Thank you very much for your comments. I
13 will take them into consideration in making my
14 recommendation.

15 I am going to leave the record open until
16 September 26th I believe is the last day of the
17 rebuttal period, and then at that point we will start
18 working on our recommendation.

19 MS. OVERLAND: To clarify, the days
20 are September 19th for initial and September 26th?

21 THE JUDGE: I believe that is the
22 case.

23 MS. OVERLAND: Because I have heard
24 a couple of dates.

25 THE JUDGE: I apologize for the

1 STATE OF MINNESOTA)
2 COUNTY OF HENNEPIN)

3
4
5 REPORTER'S CERTIFICATE

6
7 I, Angela D. Sauro, do hereby certify that
8 the above and foregoing transcript, consisting of the
9 preceding 115 pages is a correct transcript of my
10 stenograph notes, and is a full, true and complete
11 transcript of the proceedings to the best of my
12 ability.

13
14 Dated September 6, 2012

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18 Angela D. Sauro, RPR
19 Court Reporter
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